TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 84.

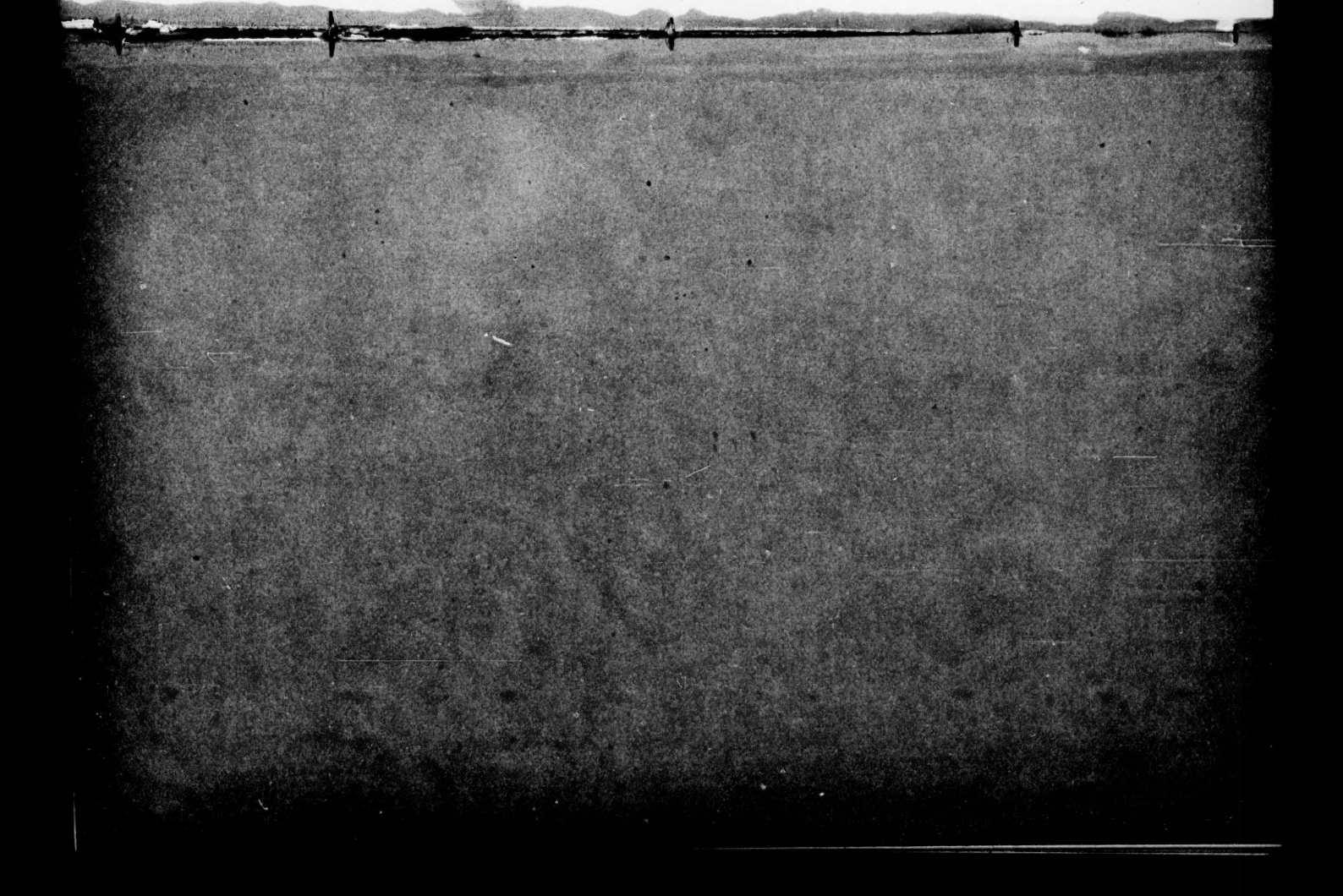
THE MONONGAHELA NATIONAL BANK OF BROWNSVILLE, PA., PLAINTIFF IN ERROR,

vs.

SAMUEL H. JACOBUS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 11, 1881.



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Among the rolls, records, and judicial proceedings had in the circuit court of the United States in and for the western district of Pennsylvania, wherein the Monongahela National Bank of Brownsville, Pa., is plaintiff, and Samuel H. Jacobus, garnishee of Henry W. Patterson, administrator of Alfred Patterson, deceased, is defendant may be found the following words and figures, to wit:

Execution docket entries.

(25)	THE MONONGAHELA NATIONAL BANK OF Brownsville *vs.* ALFRED PATTERSON.	No. 23. Nov. term, 1878.

1878, July 17. Execution attachment issued upon bond and affidavit filed. Returnable first Monday of August next, summoning as garnishee Samuel H. Jacobus, and attaching 264 shares of the capital stock of the Fayette Co. Railroad Co.

Debt	$9,056	12
Int. from July 2, 1878		
Docket fee	10	00
Clerk	7	50
" on ex. att	2	50
Marshal	2	50
" on ex. att	14	32
2 Marshal on rule and interrogatories	$5	00

1878, August 2. Ex. attachment returned.

1878, July 18. Attached 264 shares of the capital stock of the Fayette County Railroad Company (standing in the name of Samuel H. Jacobus) as the property of Alfred Patterson, and the Fayette County Railroad Company summoned as garnishee by giving to William Beeson, president, and Henry McClay, secretary and treasurer of said company (being the chief officers thereof), each a true copy of the writ in this case, and by making known the contents thereof to them.

1878, July 19. Ex. att. served personally and by copy upon Alfred Patterson at 9.30 o'clock a. m.

1878, August 2. Ex. att. served personally and by copy upon Samuel H. Jacobus.

1878, August 24. Rule and interrogatories to be answered by the Fayette County Railroad Company and Samuel H. Jacobus issued.

1878, August 26. Service of rule and interrogatories accepted by Wm. Beeson, president of the Fayette County R. R. Co.

1878, August 27. Answer of the Fayette County Railroad Company, garnishee filed.

1878, September 5. Rule and interrogatories served personally and by copy upon Samuel H. Jacobus.

1878, September 13. Answer of Samuel H. Jacobus filed.

3 1878, Sept. 30. Plea of Samuel H. Jacobus filed. Same day rule upon Fayette County Railroad Co. to plead issued.

1878, October 31. Plea of Fayette County Railroad Co. filed.

1878, November 9. Rule to plead issued September 30, 1878; returned served.

1879, May 12. Trial of issue formed herein continued.

1879, November term. Trial continued.

1880, May 12. Death of defendant, Alfred Patterson, suggested, and on motion Henry W. Patterson, administrator of Alfred Patterson, deceased, substituted of record as a party defendant.

1880, May 12. Case called for trial, jury sworn, and trial proceeded with.

1880, May 13. Verdict rendered for defendants. Plaintiff's points and answers thereto by the court filed. Also, points of defendants filed.

1880, May 17. Judgment upon the verdict. H. D. Gamble, cl'k.

1880, July 2. Writ of error returnable before the U. S. Supreme Court, at Washington, D. C. Allowed by W. McKennan, cir. j., together with a citation directed to Samuel H. Jacobus, and returnable alike with the writ of error herein filed.

1880, July 16. Bond for costs on the above case with the approval of the court thereon endorsed filed.

1880, October 4. Bill of exceptions signed and sealed by Wm. McKennan, cir. j., filed.

1880, October 4. Service of citation accepted for Samuel H. Jacobus by T. C. Lazear, esq.

4 *Execution attachment.*

UNITED STATES OF AMERICA.
Western District of Pennsylvania, ss:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

Whereas the Monongahela National Bank of Brownsville, Pa., lately before the judges of the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, to wit, on the second day of July, A. D. 1878, by the judgment of the said court recovered against Alfred Patterson the sum of nine thousand and fifty-six $\frac{12}{100}$ ($9,056.12) dollars, lawful money of the United States for its debt, as also the sum of twenty dollars costs and charges by it, about its suit in that behalf expended, whereof the said Alfred Patterson is duly convict', as appears of record;

And whereas it is alleged that the said judgment still remains due and unpaid to the said The Monongahela National Bank of Brownsville, Pa., and that there is now standing in the name of Samuel H. Jacobus two hundred and sixty-four shares of the capital stock of the Fayette County Railroad Company, and which it is alleged is the property of said Alfred Patterson, liable to be attached and levied in satisfaction of the judgment aforesaid;

5 Now, you are commanded that you attach all and singular the debts due to said Alfred Patterson, as well the said two hundred and sixty-four shares of the capital stock of the Fayette County Railroad Company, and deposits of money made by him, and goods or chattels pawned, pledged, or demised by him in whose hands or possession soever the same may be found; and that you make known to the said Alfred Patterson and Samuel H. Jacobus, and all other persons from whom such

debts may be due, or in whose hands or possession such moneys, goods, or chattels, &c., may be found, that they be and appear before the said circuit court to be holden at Pittsburgh, in and for the western district of Pennsylvania, on the first Monday of August next, there to show cause why the judgment aforesaid should not be levied of the effects of said Samuel H. Jacobus in his hands, agreeable to the 35th section of the act of assembly passed the 16th day of June, 1836, relative to executions and the rules of the said court, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Pittsburgh, the 17th day of July, anno Domini one thousand eight hundred and seventy-eight, and in the 103rd year of the Independence of the United States.

{ SEAL OF THE U. S. CIR. C'T W. D. OF PA. }

H. D. GAMBLE,
Clerk.

6 (Endorsement:) Ex. att. No. 25. Nov'r term, 1878. Fi. fa. No. , term 187 . Orig. No. 23. Nov'r term, 1878. The Monongahela National Bank of Brownsville vs. Alfred Patterson. Samuel H. Jacobus, garnishee. Debt, 9,056.12; int. from July 2, 1878; docket fee, 10.00; clerk' fee, 10.00; mar., 2.50; mar. on this writ, 14.32; Knox & Reed, att'ys for pl'ff.

July 17, 1878. Edward Dean, esq., is hereby authorized and deputed to serve within writ.

JOHN HALL,
U. S. Marshal.

Attached 264 shares of the capital stock of the Fayette County Railroad Company (standing in the name of Samuel H. Jacobus) as the property of Alfred Patterson, as within I was commanded and summoned, the said Fayette County R. R. Company, as garnishee, by giving to Wm. Beeson, president, and Henry McClay, sec'y & treasurer of said company (being the chief officers thereof), each a true and attested copy of this writ, and by making known to each of them the contents thereof, at 9 o'c. a. m. of this 18th day of July, 1878. So answers

EDWARD DEAN,
Sh'ff & Dep'y Marshal.

July 19, 1878, served the within execution attachment personally
7 and by copy upon Alfred Paterson 9.30 o'clock a. m.

JOHN HALL, *U. S. M.*,
Per J. F. SWEENEY, *Dep'y.*

Served the within execution attachment personally and by copy upon Samuel H. Jacobus August 2, 1878.

JOHN HALL, *U. S. M.*,
Per R. K. CAMPBELL, *Deputy.*

8 *Rule on garnishees and interrogatories.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA BANK OF BROWNSVILLE
vs.
ALFRED PATTERSON AND SAMUEL H. JACOBUS, and The Fayette County Railroad Company, garnishee.

No. . Nov. term, 1878. Rule on garnishees and interrogatories.

And now, to wit, August 24, 1878, rule on Samuel H. Jacobus and the Fayette County Railroad Company, garnishees in the above-stated execution attachment, to make full, true, direct, and perfect answers in writing, under oath or affirmation, to the interrogatories annexed hereto, on twenty days' notice or judgment sec reg.

By the court.

Interrogatories to be answered by the Fayette County Railroad Company

First. How many shares of the capital stock of the Fayette County Railroad was at any time owned by the defendant, Alfred Patterson? How long has he owned them, and, if transferred by him, state when
9 so transferred and to whom, and attach a copy of said transfer from the transfer book to this your answer.

Second. State who receipted for the dividends on said stock for three years before, and up to and including the dividend paid March 1st, 1878. If you should state that said dividends were receipted for by William H. Bailey, please state what relation he is to Alfred Patterson, the defendant.

Third. What is the par value of said railroad stock; what was it worth at the time of said transfer, and what is its value per share now?

Interrogatories to be answered by Samuel H. Jacobus.

First. What knowledge have you of a transfer by Alfred Patterson to you of two hundred and sixty-four shares of the capital stock of the Fayette County Railroad? Were you present when said transfer was made?

Second. What consideration, if any, did you give for said stock? State fully and particularly how the same came to be transferred to you.
10 Third. What relation, if any, are you to the defendant, Alfred Patterson?

D. KAINE AND
KNOX & REED,
Attorney' for Plaintiff.

(Endorsed:) Orig. No. 23. Nov. term, 1878. Ex. att., No. 25. Nov. term, 1878. The Monongahela National Bank of Brownsville vs. Alfred Patterson. Rule and interrogatories.

11 Answer of Fayette Co. R. R. Co.

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville
vs.
ALFRED PATTERSON AND SAMUEL H. JACOBUS and The Fayette County Railroad Company, garnishees.

No. Nov. term, 1878. Rule on garnishees and interrogatories.

I, William Beeson, president of the Fayette County Railroad Company, hereby accept service of the rule in this case and answer the interrogatories thereto annexed, as follows:

To the first interrogatory he answers as follows: Alfred Patterson was the owner of two hundred and sixty-four shares (264) *shares* of the capital stock of the Fayette County Railroad, from its reorganization in 1863 until the ninth day of January, 1878, when he transferred the same to Samuel H. Jacobus.

To the second interrogatory answer as follows: William H. Bailey, a son-in-law of Alfred Patterson, receipted for all the dividends on
12 said stock for three years prior to March, 1878, except dividend No. 39, declared Dec., 1876, which was remitted to Pittsburgh, our books do not show to whom. The dividends were declared quarterly, and the dividend for M'ch, 1878, was receipted for by William H. Bailey for Samuel H. Jacobus.

To the third interrogatory answer as follows: The par value of said stock is fifty dollars per share. The market value of said stock at the time of the transfer and ever since has been fifty dollars per share, or fully par. It would be very difficult to buy any of this stock except at considerable advance above fifty dollars.

WM. BEESON,
Pres't F. C. R. R.

FAYETTE COUNTY, *ss:*

William Beeson, being duly sworn, says that the foregoing answers are true, to the best of his knowledge and belief.

WM. BEESON.

Sworn and subscribed to before me this 26th day of August.
JOHN HOLMES, *J. P.*

(Endorsed:) Orig. No. 23, Nov. term, 1878. Ex. att. No. 25, Nov. term, 1878. The Monongahela National Bank of Brownsville vs. Alfred Patterson et al. Answer of the Fayette Co. Railroad, garnishee. Filed August 27, 1878.

13 *Answer of Samuel H. Jacobus.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville *vs.* ALFRED PATTERSON AND SAMUEL H. JACOBUS and the Fayette County Railroad Company.	Execution attachment, No. 25. November term, 1878.

Answers of Samuel H. Jacobus to interrogatories filed in above case.

(1.) To the first of said interrogatories addressed to him he answers as follows: On the 9th of January, 1878, Alfred Patterson being indebted to Mrs. Catharine W. Howell in the sum of $2,000; to Mary L. Howell, as her guardian, in the sum of $9,345.06; to Mrs. Harriet Scott in the sum of one thousand dollars, and also to Mrs. Catharine W. Howell, as widow of Joshua B. Howell, deceased, and to the heirs of the said Joshua B. Howell in the further sum of $1,233.33, the interest thereof payable to her during her life, and the principal to said heirs at her death, I became responsible to said parties for the payment of said indebtedness, and gave my several promissory notes therefor at said date, true copies of which notes are hereto annexed. At the time of assuming said liability and giving said
14 notes the said Alfred Patterson, as security both to me and to said parties, assigned and transferred to me two hundred and sixty-four shares of the capital stock of the Fayette County Railroad Company, in trust to indemnify me as maker of said notes; and to secure said parties entitled thereto to the payment of said indebtedness, I became responsible for said indebtedness only upon the faith of the security aforesaid, and with the further understanding that in case I pay said indebtedness with my own funds then I am to become the absolute owner of said stock. I was present at said transfer.

(2.) To the second interrogatory he says: I refer to my foregoing answer to 1st interrogatory, which fully states the facts in answer to this.

(3.) To the third interrogatory he answers: I am son-in-law of defendant.

SAMUEL H. JACOBUS.

Sworn to and subscribed before me this 13th day of September, A. D. 1878.

S. C. McCANDLESS,
U. S. Commissioner.

Copies of notes.

$2,000.00.] PITTSBURGH, *Ja'y* 9, 1878.

Six months after date I promise to pay to the order of Mrs.
15 Catharine W. Howell two thousand dollars, with interest semi-annually.

SAM'L H. JACOBUS.

$9,345.00.] PITTSBURGH, *Jan'y* 9, 1878.

Twelve months after date I promise to pay to the order of A. Patterson, guardian of Mary L. Howell, ninety-three hundred and forty-five dollars, with interest semi-annually, without defalcation, for value received.

S.

$1,000.00.] PITTSBURGH, *Jan'y* 9, 1878.

Six months after date I promise to pay to the order of Mrs. Harriet Scott, one thousand dollars, with interest semi-annually, without defalcation, for value received.

SAM'L H. JACOBUS.

$1,233.33.] PITTSBURGH, *Jan'y* 9, 1878.

On demand I promise to pay to Mrs. C. W. Howell interest on twelve hundred and thirty-three $\frac{33}{100}$ dollars semi-annually during her life, and at her death the principal to the heirs of John B. Howell, deceased, without defalcation, value received.

SAM'L H. JACOBUS.

(Endorsed:) No. 25. Nov. term, 1878. Ex att., orig. No. 23. November term, 1878. The Monongahela Bank of Brownville vs. Alfred Patterson. Answer of Sam'l H. Jacobus, one of the garnishees. Filed Sept. 13, 1878. Lazear.

16 *Plea of Samuel H. Jacobus.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownville *vs.* ALFRED PATTERSON. } No. 25. Nov. term, 1878.

And now, Sept. 30, 1878, Samuel H. Jacobus, the garnishee in above case, pleads nulla bona, and the matter set forth in his answers to interrogatories filed, with leave to amend or withdraw said pleas and file others before trial, as per agreement of counsel below.

THOS. C. LAZEAR,
Att'y for S. H. Jacobus.

Sept. 30, 1878. It is agreed that said garnishee shall have leave as above set forth.

KNOX & REED,
Of Counsel for Pl'ff.

(Endorsed:) No. 23. Nov. term, 1878. Monongahela Nat'l Bank of Brownsville, Pa., vs. Alfred Patterson. Plea of Sam'l H. Jacobus, garnishee. Filed Sept. 30, 1878.

17 *Rule on Fayette County R. R. Co. to plead.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville *vs.* ALFRED PATTERSON AND FAYETTE COUNTY Railroad Company, garnishee.	No. 23. Nov. term, 1878.

And now, to wit, September 30, 1878, rule to plead in one month or judgment.

From the record.

[SEAL.] H. D. GAMBLE, *Clerk.*

(Endorsed:) No. 23. Nov. term, 1878. Ex. att. No. 25. Nov. term, 1878. The Monongahela National Bank of Brownsville, vs. Alfred Patterson, Fayette County Railroad Co., garnishee. Rule to plead.

Oct. 1st, 1878, served the within rule on Alfred Patterson personally and by copy.

JOHN HALL, *U. S. M.*,
Per J. F. SWEENEY, *Dep'y.*

Oct. 10, 1878, served this rule on William Beeson, president of the Fayette County Railroad, by giving him a true and attested copy thereof and making known the contents of the same.

C. SPRINGER,
Deputy Marshal.

18 *Plea of Fayette Co. R. R.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville, Pa. *vs.* THE FAYETTE COUNTY RAILROAD COMPANY, garnishee of Alfred Patterson.	Execution attachment No. 25. Nov. term, 1878.

And now, Oct. 31, 1878, the said The Fayette County Railroad Company, garnishee in above case, pleads that the stock attached as the property of the said Alfred Patterson was before the service of said attachment assigned upon the books of said company to Samuel H. Jacobus, and, further, that the said Alfred Patterson has no property, goods, and effects in the hands and premises of said company.

THOS. C. LAZEAR,
Att'y for said Co.

(Endorsed:) No. 25. Nov. term, 1878. Orig. No. 23. Nov. t., 1878. Execution attachment. The Monongahela National Bank of Brownsville

vs. Alfred Patterson. Plea of Fayette Co. Railroad Company. Filed Oct. 31, 1878. Lazear.

19 *Suggestion of the death of defendant.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville, *vs.* SAMUEL H. JACOBUS AND THE FAYETTE COUNTY Railroad Company, garnishees.	Ex. att. No. 25. November t., 1878. Orig. No. 23, Nov'r t., 1878.

1880, May 12, on motion of counsel, order granted. The death of Alfred Patterson, defendant in the original action in the above case of ex. att., being suggested, allowing Henry W. Patterson, administrator of said Alfred Patterson, to be substituted of record as defendant therein.

20 *Apearance docket entries.*

THE MONONGAHELA NATIONAL BANK OF BROWNSville, Pa., a corporation organized and doing business under and by virtue of the laws of the United States, and located within the western district of Pennsylvania,
vs.
ALFRED PATTERSON.

Precipe, affidavit of claim, and copy of note sued upon filed June 22, 1878. Same day summons case issued, returnable first Monday of July next.

1878, June 22. Summons served personally and by copy upon Alfred Patterson, Mar. 2, 50.

1878, July 1. Declaration filed 1878, July 2.

Upon precipe filed judgment is hereby entered in favor of plaintiff and against defendent for the sum of nine thousand and fifty-six and $\frac{12}{100}$ ($9,056.12) dollars, in default of an appearance and affidavit of defence, sec. reg.

H. D. GAMBLE, *Clerk.*

1878, July. Ex. attachment No. 25, November term, 1878, issued.

1878, Aug. 2. Ex. att. returned served.

1878, August 24. Rule and interrogatories to be answered by the Fayette County Railroad Company and Samuel H. Jacobus issued.

1878, August 26. Service of rule and interrogatories accepted by Wm. Beeson, president of Fayette County R. R. Co.

1878, August 27. Answer of the Fayette County R. R. Co.,
21 garnishee filed September 13. Answer of Samuel H. Jacobus filed.

1878, September 30. Plea of Samuel H. Jacobus filed.

1878, Sept. 30. Rule upon Fayette County Railroad Co. to plead issued.

1880, May 12, sci. fa. No. 1, November term, 1880, issued.

22 *Precipe for summons.—Affidavit of claim.*

Circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF BROWNSville, Pa., a corporation organized and doing business under and by virtue of the laws of the United States, and located at Brownsville, in the county of Fayette and district aforesaid
vs.
ALFRED PATTERSON.

No. 23. Nov. term, 1878.

H. D. GAMBLE, *Clerk.*

Issue summons in case to next return day.

KNOX & REED,
Plaintiff's Attorney.

JUNE ——, 1878.

WESTERN DISTRICT, *ss:*

Before the undersigned authority personally came William M. Ledwith, teller of said bank, and agent for plaintiff in this behalf, who, being first duly sworn according to law, deposes and says that Alfred Patterson, the defendant in this case, is justly and truly indebted to the said
23 plaintiff in the sum of nine thousand and three and $\frac{12}{100}$ dollars, with interest thereon from the 3d day of June, 1878, as the endorser of two certain promissory notes, of which the following are exact copies:

$4,500.] CONNELLSVILLE, PA., *April* 23, 1878.

Thirty days after date we promise to pay to the order of A. Patterson, esq., forty-five hundred dollars *five hundred dollars*, at the Monongahela National Bank of Brownsville, Pa. Value received.

W. H. BAILEY & CO.

(Endorsed:) A. Patterson, W. H. Bailey, W. H. Bailey & Co.

$4,500.] CONNELLSVILLE, PA., *March* 2, 1878.

Ninety days after date we promise to pay to the order of A. Patterson, esq., forty-five hundred dollars, at the Monongahela National Bank of Brownsville. Value received.

W. H. BAILEY & CO.

(Endorsed:) A. Patterson, W. H. Bailey, W. H. Bailey & Co.

That the said notes before maturity were regularly endorsed by the defendant, and then and there, before maturity and in regular course of its business, the said plaintiff discounted the said notes, said dis-
24 counts being before maturity and for value, and ever since the said notes have been and now are the property of said plaintiff. That on the maturity of said notes, to wit, 26th of May and 3d of June, 1878, payment of same was regularly demanded at the Monongahela National Bank of Brownsville, Pa., the place named in said notes, and payment thereof being then refused notice of said demand and non-payment was

at once duly and legally given the said defendant, and the said notes were regularly protested, plaintiff paying the protest fees of $3.12.

And further this deponent saith not.

W. M. LEDWITH.

Sworn to and subscribed before me this 22nd day of June, A. D. 1878.

H. D. GAMBLE, *Clerk.*

(Endorsed:) No. 22. November term, 1878. Monongahela National Bank of Brownsville, Pa., vs. Alfred Patterson. Precipe, aff., and copy of notes, filed June 22, 1878. Knox & Reed.

25 *Narr.*

In the circuit court of the United States for the western district of Pennsylvania.

Alfred Patterson was summoned to answer the Monongahela National Bank, of Brownsville, a corporation organized and doing business under and by virtue of the laws of the United States of a plea of trespass on the case: Whereupon the said plaintiff, by Knox & Reed, its attorneys, complain for that whereas W. H. Bailey & Co., on the 2nd day of March and 23d of April, in the year of our Lord one thousand eight hundred and seventy-eight, at Brownsville, to wit, at the district aforesaid, did make their certain promissory notes in writing and deliver the same to the plaintiff, and thereby promised to pay to the order of Alfred Patterson nine thousand dollars (being two notes of $4,500 each) in thirty and ninety days after the above dates in after the date thereof, which period has now elapsed; and the said Alfred Patterson then and there endorsed and delivered the same to plaintiff; and the said W. H. Bailey & Co. did not pay the amount thereof, although the same presented to them on the day when it became due, of all which the defendant then and there had due notice. By reason whereof and by force of the statute in such

26 case made and provided the said defendant became liable to pay the said plaintiff the said sum of money in said notes mentioned; and being so liable, the said defendant on himself did assume and to the said plaintiff did promise the payment of the said sum of money in said note mentioned when he should be thereunto afterward required. And whereas also said defendant heretofore, to wit, on the 26th day of May and June 5, in the year of our Lord one thousand eight hundred and seventy-eight, at Connellsville, in the district aforesaid, was indebted to the said plaintiff in the sum of nine thousand three & $\frac{12}{100}$ dollars for the price and value of goods, wares, and merchandise then and there sold and delivered by the plaintiff to the defendant at his request.

And in the sum of $9,003$\frac{12}{100}$ dollars for the price and value of work then and there done, and material for the same provided by the plaintiff for the defendant at his request.

And in the sum of $9,003$\frac{12}{100}$ dollars for money then and there lent and advanced to, and paid, laid out, and expended by the plaintiff for the defendant at his request.

27 And in the sum of $9,003$\frac{12}{100}$ dollars for money then and there received by the defendant for the use of the plaintiff.

And in the sum of $9,003$\frac{12}{100}$ dollars for money found to be due from

the defendant to the plaintiff on an account then and there stated between them.

And whereas the defendants afterwards, to wit, the day and year aforesaid, in consideration of the premises, then and there promised to pay the said several sums of money respectively to the plaintiff on request.

Yet he has disregarded his promises, and has not paid any of the said moneys or any part thereof. To the plaintiff's damage twenty thousand dollars, and therefore it brings suit.

KNOX & REED,
Att'y for Plaintiff.

(Endorsed:) No. 23. Nov. term, 1878. Monongahela National Bank of Brownsville vs. Alfred Patterson. Narr. Filed July 1, 1878. Knox & Reed.

28 *Summons.*

UNITED STATES,
Western District of Pennsylvania, set:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that you summon Alfred Patterson, late of your district, if he may be found therein, so that he be and appear befor' the judges of the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at Pittsburgh, on the first Monday of July next, to answer to the Monongahela National Bank of Brownsville, Pa., a corporation organized and doing business under and by virtue of the laws of the United States, and located at Brownsville, in the county of Fayette, and within the western district of Pennsylvania, in an action on the case.

And have you then there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this 22nd day of June, A. D. 1878, and in the 102nd year of the Independence of the said United States.

[SEAL.] H. D. GAMBLE, *Clerk.*

29 (Endorsed:) No. 23. Nov. term, 1878. The Monongahela National Bank of Brownsville vs. Alfred Patterson. Summons. Knox & Reed.

JUNE 22, 1878.—Served the within writ personally and by copy upon Alfred Patterson.

JOHN HALL, *U. S. Marshal.*
Per H. W. SMITH, *Deputy.*

30 *Precipe for judgment.*

Circuit court of the United States for the western district of Pennsylvania.

MONONGAHELA NATIONAL BANK OF BROWNSville, Pa.,
vs.
ALFRED PATTERSON.

To H. D. GAMBLE, esq., clerk:

Enter judgment in above case in favor of plaintiffs and against defendant for want of appearance and affidavit of defence.

Liquidate as follows:

Debt	$9,003 12
Int	53 00
Total	9,056 12

July 2, 1878.

KNOX & REED.

(Endorsed:) No. 23. November term, 1878. Monongahela National Bank *vs.* Alfred Patterson. Precipe for judgment. Filed July 2, 1878. Knox & Reed.

31 *Judgment docket entry.*

No.	Term.	Year.	Plaintiff.	Defendant.	Date of judgment.	Debt.	Interest from.	Costs.	Attorney.
23	Nov.	1878	Monongahela Nat'l Bank of Brownsville.	Alfred Patterson.	July 2, 1878	$9,056 12	July 2, 1878	....	Knox & Reed.

32 *Minutes of trial.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville,
vs.
SAMUEL H. JACOBUS AND THE FAYETTE COUNTY Railroad Co., garnishees of Henry W. Patterson, administrator.

Ex. No. 25. Nov'r term, 1878. Orig. 23. Nov. term, 1878.

1880, May 12. The above cause called for trial and a jury being called, came, viz, James Seely, William Donnelly, R. S. Kennedy, Milton Calhoun, A. J. Hill, Robert M. Graham, B. F. Morris, Noah Waidley, John H. Gailey, C. B. Hawley, George Gross, and George W. Strine, twelve good and lawful men, who having been duly empanneled were sworn to

try the issue here joined. And after hearing, on May 13th, the jury find for the defendants.

1880, May 17. Judgment upon the verdict.

H. D. GAMBLE, *Clerk.*

33 *Plaintiff's points.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville
vs.
SAMUEL H. JACOBUS ET AL.

The counsel for plaintiff ask the court to charge the jury:

(I.) If the jury, under all the evidence, should find that the stock in the Fayette County Railroad Company was assigned on January 9, 1878, to Samuel H. Jacobus in trust for certain creditors of Alfred Patterson, said Patterson being then insolvent, and said assignment being made on account of liability to pay his debts, and to secure the said Jacobus as maker of the notes in evidence given by him on that day to Alfred Patterson, and that the primary purpose and intent of the whole transaction was with the stock to pay said certain-named creditors, then the said transfer and assignment should, under the Pennsylvania statutes, have been recorded in the office for the recording of deeds in the county where said Patterson resided, and if it were not so recorded the said stock is liable to attachment in this case.

34 (II.) That if under all the evidence the jury should find that the stock was transferred in trust and to secure the payment of the creditors named in the notes then given, and Patterson, the assignor, was then insolvent, and the assignment was made on account of inability to pay his debts, then it was an assignment which, under the assignment laws of Pennsylvania (act of March 24th, 1818, sec. 5, and act of April 17, 1843, sec. 1), shou'd have been recorded in the office for recording deeds where the assignor lived.

(III.) That in so far as the stock in this case was assigned to secure the payment of the note dated January 9th, 1878, for $9,345.00, to the order of A. Patterson, guardian of Mary S. Howell, it was in law a hindrance of the creditors of A. Patterson and therefore void.

(IV.) A transfer of an insolvent debtor's property to hinder or delay other creditors is void, and under the evidence the assignment of January 9, 1878, in so far as *far as* it was security for the payment of the note for $9,345.00 to the order of A. Patterson, guardian, was a hindrance to other creditors of A. Patterson, and was void.

35 (V.) If Alfred Patterson, on January 9th, 1878, was insolvent, and on that day he assigned the whole of this stock to his son-in-law to secure the payment of the said recited notes, which notes were then handed to Alfred Patterson, and were so held by him until after the execution attachment in this case was served, then this constitutes in law such a fraud as to be void against attaching creditors.

If the court decline to affirm all of these points, then:

(VII.) The jury should by their verdict find the present value of the stock attached, and the defendant only has a lien upon the same to secure the payment of said recited notes and interest.

Plaintiff's point, additional.

If the jury should find that at the time the attachment was served, to wit, on July 19th, 1878 (Cook vs. Fullis, 18 Wall., 332), Alfred Patterson still had possession of the notes, and that no information had
36 been given the payees therein named of the transaction, then said stock is liable for the plaintiff's claim, and no subsequent ratification by the payees of Patterson's act would effect the lien of plaintiff's attachment.

This instruction is refused.

By the court.

MONONGAHELA NAT. BANK OF BROWNSVILLE
vs.
S. H. JACOBUS, &c.

Answers to pl'ff's points.

1. If the assignment to Jacobus was an assignment in trust for certain creditors of the assignor merely, it would be within the scope of the State statutes relating to voluntary assignments, and must have been recorded, but if it was the consideration of an assumption by Jacobus of the debts for which he gave his notes it is not void for the omission to record it, although the primary purpose and intent of the transaction was to secure the payment of the debts assumed by Jacobus.

37 2. This is answered in answer to the first point.

3. Refused.

4. A transfer of a debtor's property to hinder, delay, or defeat any of his creditors is void, and in so far as the point presents this proposition it is affirmed. As to the remainder of it, it is refused.

5. Refused.

6. Refused.

By the court.

(Endorsed:) No. 23. November term, 1878. Appearance docket. Circuit court of the United States, western district of Pennsylvania. The Monongahela National Bank of Brownsville vs. Samuel H. Jacobus and the Fayette Co. R. R. Co. and Henry W. Patterson, adm'r. Plaintiff's points, and answers by the court. Filed May 13, 1880.

38 *Defendants' points.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville
vs.
SAMUEL H. JACOBUS, GARNISHEE, &c. } No. 25. Nov. T., 1878.

1. If the jury find that the stock in question was assigned to Samuel

H. Jacobus in consideration of this assumption of the liabilities of Alfred Patterson to the parties named in the notes given by him at the time, and that said notes were actually given by him on the faith of such assignment, that he is entitled to hold said stock as against this attachment; and this whether he be regarded as holding the stock as pledgee or absolute owner.

2. That if the jury find that the said garnishee, Samuel H. Jacobus, gave the notes referred to in his answer filed in this case for the bona fide purpose of securing the parties named therein without any fraudu-
39 lent design, that is, without any other intent than to secure them in preference to other creditors of the said Alfred Patterson, relying upon the transfer of said stock to him as his security for so doing, then the verdict should be rendered in his favor.

Both the foregoing points are answered affirmatively.

By the court.

(Endorsed:) No. 23. Nov. term, 1878. The Monongahela National Bank of Brownsville vs. Samuel H. Jacobus and the Fayette County R. R. Co. and Henry W. Patterson, adm'r. Defendants' points and answers by the court. Filed May 13, 1880.

40 *Judgment docket entry.*

No.	Term.	Year.	Plaintiff.	Defendant.	Date of judgment.	Debt.	Interest from—	Costs.	Attorney.
Ex. att. 25	Nov.	1878	Alfred Patterson, and Samuel H. Jacobus, garnishee.	Monongahela Nat'l Bank of Brownsville plaintiff.	May 17, 1880	....	.....	$23 82	T. C. Lazear.

41 *Bond.*

MONONGAHELA NATIONAL BANK OF BROWNSville, Pa., plaintiff in error,
vs.
SAMUEL H. JACOBUS.

Know all men by these presents, that we, William H. Ledwith, cashier of the Monongahela National Bank of Brownsville, Pa., James L. Bowman, and John R. Dutton, of Brownsville, Penn'a, are held and firmly bound unto the above-named defendants in error in the sum of one thousand dollars, to be paid to the said defendants in error; to which payment well and truly to be made, we do bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this tenth day of July, anno Domini one thousand eight hundred and eighty.

Whereas the above-named The Monongahela National Bank of Brownsville, Penn'a, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in a suit in the cir-
42 cuit court of the United States for the third circuit and western district of Pennsylvania, wherein the said Monongahela National

Bank of Brownsville, was plaintiff, and the said Samuel H. Jacobus was defendant, the said suit being No. Ex. att. No. 25, Nov'r term, 1878.

Now, the condition of this obligation is such that if the above-named Monongahela National Bank of Brownsville, Pa., shall prosecute its said writ of error to effect, and answer all damages for delay and costs in said suit, and just damages for delay, and costs and interest on the appeal if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. M. LEDWITH, *Cashier.*
JAMES L. BOWMAN. [SEAL.]
JOHN R. DUTTON. [SEAL.]

Sealed and delivered in presence of—
S. P. KNOX.

43 *Bill of exceptions.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville
versus.
ALFRED PATTERSON AND SAMUEL H. JACOBUS and The Fayette County Railroad Company, garnishees.

No. 23. November term, 1878. Ex. att. No. 25. Nov. t. 1878.

Be it remembered that on the 2nd day of July, A. D. 1878, *No.* No. 25, November term, 1878, of the said circuit court, a judgment was entered in favor of the Monongahela National Bank of Brownsville against Alfred Patterson for the sum of $9,056.12; and that on said judgment, so entered, execution attachment was issued against the Fayette County Railroad Company and Samuel H. Jacobus, attaching 264 shares of the capital stock of said railroad company in the hands of the said Samuel H. Jacobus as the property of Alfred Patterson.

That in accordance with the practice in such cases pursued, and the law of the State of Pennsylvania in such case made and provided, which
44 law is adopted as the practice of the circuit court of the United States in and for the western district of Pennsylvania, the said plaintiff did file an affidavit with the clerk of the said court in which the said judgment was obtained, setting forth that there was then standing in the name of Samuel H. Jacobus 264 shares of the capital stock of the Fayette County Railroad Company, which it verily believed to be really and bona fide the property of the said Alfred Patterson, the debtor, and it also entered into a recognizance, with two sufficient sureties, conditioned for the payment of such damages as the court might adjudge as to the party to whom such stock should really belong, in case such stock should not be the property of the said defendant, the said Alfred Patterson. And the said plaintiff filed and served upon the said railroad company certain interrogatories, which the said railroad company, as they were in duty bound to do, answered, and which interrogatories and the answers thereto are as follows, viz:

Rule on garnishees and interrogatories.

45 In the circuit court of the United States. No. . November term, 1878.

THE MONONGAHELA BANK OF BROWNSVILLE
versus
ALFRED PATTERSON AND SAMUEL H. JACOBUS and The Fayette County Railroad Company, garnishees.

Execution attachment sur judgments. No. . Nov. term, A. D. 1878.

And now, to wit, August 24, 1878, rule on Samuel H. Jacobus and the Fayette County Railroad Company, garnishees in the above-stated execution attachment, to make full, true, direct, and perfect answers in writing, under oath or affirmation, to the interrogatories annexed hereto, on twenty days' notice or judgment sec. reg.

By the court.

Interrogatories to be answered by the Fayette County Railroad Company.

First. How many shares of the capital stock of the Fayette County Railroad were at any time owned by the defendant, Alfred Patterson? How long had he owned them? And if transferred by him state when so transferred and to whom, and attach a copy of said transfer from the transfer book to this your answer.

46 Second. State who receipted for the dividends on said stock for three years before and up to and including the dividend paid March 1st, 1878. If you should state that said dividends were receipted for by Mr. W. Bailey, please state what relation he is to Alfred Patterson, the defendant.

Third. What is the par value of said railroad stock; what was it worth at the time of said transfer, and what is its value per share now?

The answers to the above interrogatories are as follows:

1. William Beeson, president of the Fayette County Railroad Company, hereby accepts service of the rule in this case and answer' the interrogatory thereto annexed as follows:

To the first interrogatory he answer' as follows: Alfred Patterson was the owner of two hundred and sixty-four (264) shares of the capital stock of the Fayette County Railroad from its reorganization in 1863 until the 9th day of January, 1878, when he transferred the same to Samuel H. Jacobus.

To the second interrogatory answer' as follows: William H. Bailey, a son-in-law of Alfred Patterson's, receipted for all the dividends on

47 said stock for three years prior to March, 1878, except dividend No. 39, declared December, 1876, which was remitted to Pittsburgh, our books do not show to whom; the dividends were declared quarterly, and the dividend *from* March, 1878, was receipted for by William H. Bailey for Samuel H. Jacobus.

To the third interrogatory answer' as follows: The par value of said stock was fifty dollars per share. The market value of said stock at the time of the transfer and ever since has been fifty dollars per share, or fully

par. It would be very difficult to buy any of this stock except at considerable advance above fifty dollars.

WM. BEESON,
Prest. F. C. R. R.

FAYETTE COUNTY, *ss:*

William Beeson being duly sworn says that the foregoing answers are true to the best of his knowledge and belief.

WM. BEESON.

Sworn and subscribed to before me this 26th day of August.
JOHN HOLMES, *J. P.*

And the said plaintiff did then and there further file certain in-
48 terrogatories upon the said Samuel H. Jacobus, which the said Samuel H. Jacobus, as he was in duty bound to do, answered, and which interrogatories, and the several answers of the said Jacobus thereto are as follows, viz:

Interrogatories to be answered by Samuel H. Jacobus.

First. What knowledge have you of any transfer by Alfred Patterson to you of two hundred and sixty-four shares of the capital stock of the Fayette County Railroad? Were you present when said transfer was made?

Second. What consideration, if any, did you give for said stock? State fully and particularly how the same came to be transferred to you.

Third. What relation, if any, are you to the defendant, Alfred Patterson?

Answers of Samuel H. Jacobus to interrogatories filed in above case, hereto annexed.

First. To the first of said interrogatories addressed to him he answered as follows:

On the 9th of January, 1878, Alfred Patterson being indebted to Mrs. Catherine W. Howell in the sum of $2,000, to May L. Howell, as her guardian, in the sum of $9,345.06; to Mrs. Harriet Scott
49 in the sum of one thousand dollars, and also to Mrs. Catherine W. Howell, as widow of Joshua B. Howell, dec'd, and to the heirs of the said Joshua B. Howell, in the further sum of $1,233.33, the interest thereof being payable to her during her life and the principal to said heirs at her death, I became responsible to said parties for the payment of said indebtedness and gave my several promissory notes therefor at said date, true copies of which notes are hereto annexed. At the time of assuming said liability and giving said notes the said Alfred Patterson, as security both to me and to said parties, assigned and transferred to me two hundred and sixty-four shares of the capital stock of the Fayette County Railroad Company, in trust, to indemnify me as maker of said note' and to secure said parties entitled thereto to the payment of said indebtedness. I became responsible for said indebtedness only upon the faith of the security aforesaid, and with the further understanding that in case I pay said in-

debtedness with my own funds then I am to become the absolute owner of said stock. I was present at said transfer.

50 Second. To the second interrogatory he says: I refer to my foregoing answer to first interrogatory, which fully states the facts in answer to this.

Third. To the third interrogatory he answers: I am a son-in-law of defendant.

SAMUEL H. JACOBUS.

Sworn to and subscribed before me this 13th day of September, A. D. 1878.

S. C. McCANDLESS,
U. S. Commissioner.

Copies of notes.

$2,000.] PITTSBURGH, *Jan'y 9th*, 1878.

Six months after date I promise to pay to the order of Mrs. Catherine W. Howell two thousand dollars, with interest semi-annually.

SAMUEL H. JACOBUS.

$9,345.] PITTSBURGH, *Jan'y 9th*, 1878.

Twelve months after date I promise to pay to the order of A. Patterson, guardian of Mary L. Howell, ninety-three hundred and forty-five dollars, with interest semi-annually, without defalcation, for value received.

S.

$1,000.] PITTSBURGH, *Jan'y 9th*, 1879.

51 Six months after date I promise to pay to the order of Mrs. Harriet Scott, one thousand dollars, with interest semi-annually, without defalcation, for value received.

SAMUEL H. JACOBUS.

$1,233.33.] PITTSBUGH, *Jan'y 9th*, 1878.

On demand I promise to pay to Mrs. C. W. Howell interest on twelve hundred and thirty-three and $\frac{33}{100}$ dolls. semi-annually during her life, and at her death the principal to the heirs of Joshua B. Howell, deceased, without defalcation, value received.

SAMUEL H. JACOBUS.

And thereupon the said plaintiff ruled the said Samuel H. Jacobus, to plead, and the said Samuel H. Jacobus, heretofore, on the 30th day of September, 1878, did plead as follows:

In C. C. U. S., west. dist. Pa. No. 25, Nov. t. 1878.

MONONGAHELA NATIONAL BANK OF BROWNSVILLE
vs.
ALFRED PATTERSON.

And now, September 30th, 1878, Samuel H. Jacobus, the garnishee in

above case, pleads nulla bona, and the matters set forth in the
52 answer to interrogatories filed, with leave to amend or withdraw said pleas and file others before trial, as per agreement of counsel below.

THOS. C. LAZEAR,
Att'y for S. H. Jacobus.

September 30th, 1878. It is agreed that said garnishees shall have leave as above set forth.

KNOX & REED,
Of Counsel for Plaintiff.

And be it also known that on the 12th day of May, A. D. 1880, the said cause as between the said Monongahela National Bank of Brownsville, and the said Samuel H. Jacobus, being at issue, a jury was called, empanneled, and sworn, whereupon the parties proceeded to offer their evidence.

The plaintiff, to maintain the issue on its part, introduced the following evidence. They first offered the record in the case of the Monongahela National Bank of Brownsville vs. Alfred Patterson, at No. 25, November term, 1878, in the United States circuit court, being the original judgment, and showing the judgment in favor of the plaintiff on July 2, 1878, for 9,056.12, which was duly admitted.

Also execution at No. 25, November term, 1878, issued on the
53 above judgment, setting forth that there is now standing in the name of Samuel H. Jacobus 264 shares of the capital stock of the Fayette County Railroad Company, which it is alleged is now the property of Alfred Patterson, which was also admitted. Also the interrogatories and answers of William Beeson, president of the Fayette County Railroad Company, which interrogatories and answers are as follows:

First interrogatory. How many shares of the capital stock of the Fayette County Railroad was at any time owned by the defendant, Alfred Patterson; how long has he owned them, and, if transferred by him, state when so transferred, and to whom, and attach a copy of said transfer from the transfer-book to your answer?

Second interrogatory. State who receipted for the dividends on said stock for three years before, and at, to, and including the dividend paid March 1st, 1878. If you should state that said dividends were receipted for by William H. Bailey, please state what relation he is to Alfred Patterson, the defendant?

Third interrogatory. What is the par value of said railroad stock,
54 what was it worth at the time of said transfer, and what is its value per share now?

The answer to the above interrogotaries are as follows:

1. William Beeson, president of the Fayette County Railroad Company, hereby accept service of the rule in this case and answer' the interrogatories thereto annexed, as follows:

To the first interrogatory I answer, as follows:

Alfred Patterson was the owner of two hundred and sixty-four (264) shares of the capital stock of the Fayette County Railroad from its reorganization in 1863 until the 9th day of January, 1878, when he transferred the same to Samuel H. Jacobus.

To the second interrogatory, answer as follows:

William H. Bailey, a son-in-law of Alfred Patterson's, receipted for all the dividends on said stock for three years prior to March, 1878, except dividend No. 39, declared December, 1876, which was remitted to Pittsburgh, our books do not show to whom; the dividends were declared quarterly, and the dividend for March, 1878, was receipted for by William H. Bailey for Samuel J. Jacobus.

To the third interrogatory, answer as follows:

55 The par value of said stock was fifty dollars per share. The market value of said stock at the time of the transfer and ever since has been fifty dollars per share, or fully par. It would be very difficult to buy any of this stock except at considerable advance above fifty dollars.

(Signed) WM. BEESON,
Prest. F. C. R. R.

Plaintiff's counsel also offered in evidence judgments Nos. 313, September term, 1878; 153, September term, 1878; 146, September term, 1878; 135, September term, 1878; 118, September term, 1878; 658, June term, 1878; 843, June term, 1878; 844, June term, 1878; 776, June term, 1878; 777, June term, 1878; 765, June term, 1878; 766, June term, 1878; 781, June term, 1878; 715, July term, 1878; 641, July term, 1878; 619, July term, 1878; 627, July term, 1878; 628, July term, 1878; 450, July term, 1878; 371, July term, 1878; 384, July term, 1878; 388, July term, 1878; and 389, July term, 1878, of common pleas Nos. one and two of Allegheny County against Alfred Patterson, amounting to about $101,217.59, which were also admitted.

Also the records in the circuit court of the United States for the
56 western district of Pennsylvania, showing judgments against Alfred Patterson, whereupon the court inquiring the purpose of said offer, and counsel for plaintiff replying that it was for the purpose of proving Alfred Patterson's insolvency on the 9th day of January, 1878, the time of the transfer to Samuel H. Jacobus of the said 264 shares of the capital stock of the Fayette County Railroad Company, counsel for defendant then admitted, which admission was noted upon the record, that upon the ninth day of January, 1878, Alfred Patterson was unable to pay his debts as they matured, with money, and was therefore technically insolvent, and that he has indebtednesses still outstanding that he has not paid.

JASPER THOMPSON then being called and duly sworn, on behalf of the plaintiff, testified as follows:

That he was the secretary of the Fayette County Railroad Company, and as such secretary had possession of the stock and transfer-book of the said company, which stock and transfer-book said witness then and
57 there produced, showing that prior to January 9th, 1878, said Alfred Patterson was the owner of 264 shares of stock in said company, which upon that date he did transfer to Samuel H. Jacobus, a copy of which transfer in words and figures is as follows:

A. Patterson to Samuel H. Jacobus.

For value received, I, A. Patterson, assign and transfer 264 shares in

the capital stock of the Fayette County Railroad Company to Samuel H. Jacobus in trust, &c.

Witness my hand this 9th day of January, 1878.

(Signed) A. PATTERSON.

In the presence of—

HENRY W. PATTERSON.

Said Jasper Thompson further testified that the *fare* market value of said stock in January, 1878, and since that time was $60.00 per share. Whereupon the plaintiff, in connection with the testimony of this witness, offered in evidence the transfer herein before given, which was admitted.

The said witness further testified that the said stock was a regular dividend-paying stock, paying the stockholders a dividend of 8 per cent. per annum, payable quarterly, and clear of all taxes, and that said div-
58 idend was guaranteed by the Baltimore and Ohio Railroad Company; that the office of the said railroad company is in Uniontown, Pennsylvania, but that the transfer of the said 264 shares of stock to Samuel H. Jacobus was made at Pittsburgh, Pennsylvania, in presence of Henry W. Patterson, who is a son of Alfred Patterson, and said Samuel H. Jacobus was then and is now a son-in-law of the said Alfred Patterson, and that the said Alfred Patterson, Henry W. Patterson, and Samuel H. Jacobus *was* at that time and now are residents of the city of Pittsburgh, of the State of Pennsylvania.

The plaintiff, to further maintain the issue upon his part, offered in evidence the interrogatories and answers of Samuel H. Jacobus, which are as follows:

Interrogatories to be answered by Samuel H. Jacobus.

First. What knowledge have you of any transfer by Alfred Patterson to you of two hundred and sixty-four shares of the capital stock of the Fayette County Railroad? Were you present when said transfer was made?

Second. What consideration, if any, did you give for said stock?
59 State fully and particularly how the same came to be transferred to you.

Third. What relation, if any, are you to the defendant, Alfred Patterson?

Answers of Samuel H. Jacobus to the foregoing interrogatories.

First. To the first of said interrogatories addressed to him he answered as follows: On the 9th of January, 1878, Alfred Patterson, being indebted to Mrs. Catherine W. Howell in the sum of two thousand dollars; to May L. Howell, as her guardian, in the sum of $9,345.06; to Mrs. Harriet Scott in the sum of one thousand dollars, and also to Mrs. Catharine W. Howell, as widow of Joshua B. Howell, dec'd, and to the heirs of the said Joshua B. Howell in the further sum of $1,233.33, the interest thereof being payable to her during her life and the principal to said heirs at her death, I became responsible to said parties for the payment of said indebtedness, and gave my several promissory notes therefor at said date, true copies of which notes are hereto annexed. At the time of assuming said liability and giving said notes the said Alfred Patterson, as security both

to me and to said parties, assigned and transferred to me two hun-
60 dred and sixty-four shares of the capital stock of the Fayette County Railroad Company, in trust, to indemnify me as maker of said note and to secure said parties entitled thereto to the payment of said indebtedness. I became responsible for said indebtedness only upon the faith of the security aforesaid, and with the further understanding that in case I pay said indebtedness with my own funds then I am to become the absolute owner of said stock. I was present at said transfer.

Second. To the second interrogatory he says: I refer to my foregoing answer to the first interrogatory, which fully states the facts in answer to this.

Third. To the third interrogatory he answers: I am a son-in-law of defendant.

(Signed) SAMUEL H. JACOBUS.

Then and there Mr. P. C. Knox, of counsel for plaintiff, and on its behalf, and for the purpose of further maintaining the issue on its part, formally made the statement that he had made an examination of the records in the office for the recording of deeds and assignments in Alle-
61 gheny County, Pennsylvania, and that the assignment of the said 264 shares of the capital stock of the Fayette County Railroad Company by Alfred Patterson to Samuel H. Jacobus is not recorded in said county, which statement is accepted by defendants' counsel as though he, the said P. C. Knox, were under oath.

Thereupon, to further maintain the issue on the part of the plaintiff, Jasper Thompson was recalled, who testified that there were dividends accruing on the said 264 shares since the attachment thereof to the amount of 2,112, none of which have been paid, and that one dividend since the date of the assignment, amounting to $264, had been paid to the said Samuel H. Jacobus, and that all dividends accruing since said attachment issued now remain in the hands of the company unpaid.

Whereupon the plaintiff's counsel announced to the court that their case was closed, and that they rested; and thereupon the counsel for the defendant opened his case to maintain the issue on his part, and offered as a witness the said Samuel H. Jacobus, the defendant. And there-
62 upon counsel for plaintiff objected; the said Samuel H. Jacobus being a party to the record and interested in the suit was incompetent, because Alfred Patterson, the assignor of the stock, the thing in action was dead. Whereupon the court did order and adjudge as follows:

Objections are overruled, and the witness be admitted, and a bill is hereupon sealed at the request of the plaintiff.

W. MCKENNAN, [L. S.]
Cir. Judge.

And thereupon the said SAMUEL H. JACOBUS was duly sworn and testified as follows:

Q. Where do you live?
A. In Allegheny City.
Q. What is your business?
A. Hardware manufacturer.
Q. How long have you been in that business?

A. Fifteen years.
Q. Are you concerned as the Jacobus Manufacturing Company?
A. And Nimick.
Q. You are a son-in-law of Alfred Patterson, deceased?
A. I am.

Q. Did you, at his instance, in January, 1878, assume certain
63 liabilities of Mr. Patterson?

A. I did.
Q. Did you give your notes?
A. Yes, sir.
Q. Are those the same notes (papers handed to witness) a copy of which are attached to your answer in this case?
A. Yes, sir.

And thereupon, in the progress of the testimony, defendants' counsel asked the said witness, as follows:

Q. State what occurred at the time; what induced you to give the notes (referring to the time of the assignment of the stock by said Patterson to said Jacobus)?

Whereupon the counsel for plaintiff then and there objected that the said witness, being a party to the record, was incompetent to testify what took place between him and the said Alfred Patterson at the time the stock, the thing in action, was assigned by said Alfred Patterson to said Samuel H. Jacobus, he, the said Alfred Patterson, having since deceased. Whereupon the court did overrule said objection and admitted the testimony, and a bill was sealed at the request of the plaintiff's counsel.

W. McKENNAN, [L. S.]
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64 Q. State the transaction; what occurred?

A. Mr. Patterson said that he was indebted to certain parties, Mrs. Howell, Mary Howell, and Mrs. Scott, as guardian and trustee to certain amounts, and he wished to clear. His endorsements were for Dawson & Bailey; would embarrass him, and he asked me to assume this indebtedness, and I gave my notes to him or to him, as guardian, which I did for the amount he was indebted for; in consideration of my giving these notes he transferred this Fayette Railroad Company's stock to me.

Q. Where did he make this transfer?
A. In his office in the Bank of Commerce.
Q. Was the transfer-book there?
A. Yes, sir.
Q. Who was present when that transfer was made?
A. Mr. Patterson and Henry W. Patterson; that is, Alfred Patterson and Henry W. Patterson.
Q. State what they said on that occasion?

A. I asked, after his statement to me (after he stated his indebtedness to these parties, and asked me to give the notes)—I asked him what
65 security I would have in case I should do so, and he stated he would transfer the stock to me to secure me. There was further conversation, but very little said in reference to drawing up the notes. I

went up to my own office and drew them up and took them back and gave them to him.

Q. Your office is near by, in the same block?

A. The same building.

Q. You drew up the notes and gave them to him for these parties?

A. Yes, sir.

Q. And the stock was thereupon transferred?

A. He transferred the stock to me.

(Transfer-book shown to witness.)

Q. Is that the book in which the transfer was made?

A. Yes, sir.

Q. Were those words "in trust" put in there at that time?

A. They were not; no, sir.

Q. Were they put there with your knowledge or direction?

A. Not at all, sir.

Q. State whether there was any mention of trust at the time of the transfer.

A. There was not.

66 Q. In whose handwriting is the body of that transfer, with the exception of the words "in trust, &c.?"

A. It is in my handwriting.

Q. In your handwriting?

A. Yes, sir.

Q. When did you first know of those words added there?

A. I really can't answer that question; some time ago.

Q. Was it when the book was brought here in court, when the case was formerly to be tried, and shown to you?

A. Yes, sir.

Q. The first knowledge you had of it?

A. Yes, sir.

Q. Since Mr. Patterson's death?

A. Yes, sir.

Q. Was anything said about these parties to whom the notes were made payable having any interest in that stock?

(Objected to.)

By the COURT to the witness:

Q. As I understand, Mr. Jacobus, the agreement between you and Mr. Patterson was that you were to assume the payment of liabilities to Patterson and he was to transfer that stock to secure you?

A. Yes, sir.

67 Q. And that was the whole thing?

A. That was the whole thing.

Q. Nothing more occurred between you after that?

A. No, sir.

By DEFENDANT'S COUNSEL:

Q. You did state that there was no such word as "trust" used at the time?

A. No, sir, it was not.

Q. Explain, then, why the word "trust" is used in your answer, whether you intended that to'.

A. Well, I understand that to mean, of course, that there was a trust so far as he was concerned; that I was to pay these notes. I didn't understand it in any other way; when I signed this answer of course I understood he would not give me the stock for nothing, and that he gave it to me—that I assume his indebtedness, in trust that I should pay the notes.

Q. Have you made any payments on these notes since and prior to the time that the execution attachment was served?

(Plaintiff's counsel object to "prior to the time the execution was served."

68 Q. You have recognized your liability under these notes, have you not, sir?

(Objected to.)

By the COURT to the witness:

Q. What became of these notes?

A. They were delivered to Mr. Patterson.

Q. You delivered them to Mr. Patterson?

A. Yes, sir.

Cross-examination by Mr. WATSON:

Q. You swore to this answer, did you not?

A. I did, sir.

Q. Will you let me read you a part of this answer and ask you what explanation you have to give in reference to this: "At the time of assuming said liability and giving said notes the said Alfred Patterson, as security both to me and to said parties, assigned and transferred to me 264 shares of the capital stock of the Fayette County Railroad Company, in trust, to indemnify me as maker of said notes, and to secure said parties entitled thereto to the payment of said indebtedness." Wasn't the assignment in trust to secure the payment of said indebtedness to the parties to whom the notes were given?

A. I didn't so understand it.

Q. Allow me to read you the balance of your answer in addition

69 to what I have already read: "I became responsible for said indebtedness only upon the faith of the security aforesaid, and with the further understanding that in case I pay said indebtedness with my own funds then I am to become the absolute owner of said stock." Wasn't your payment merely contingent—wasn't it understood that the stock was to pay the debt?

A. No, sir; it was not.

Q. Then, why do you use the words "in case I pay the said indebtedness with my own funds, then I am to become the absolute owner of said stock?"

A. I understood the transfer to be an absolute transfer in consideration of these notes.

Q. The question I ask you is this: If that is the way you understood it why did you say in your answer, "became responsible for said indebtedness only upon the faith of the security aforesaid, and with the further understanding that in case I paid the said indebtedness with my own funds then I am to become the absolute owner of said stock?" Were you to become the owner of that stock until you paid the debts?

70 A. I became the owner when it was transferred, as I understood it.

Q. Then your answer is not correct in saying you were to become the owner when you paid the debts?

A. I can't say it is not correct.

Q. Well, is it, or is it not? There it is; read it.

A. It is correct as I understood it, but not as you do.

Q. Will you explain what you mean, "with the further understanding that in case I pay the indebtedness out of my own funds then I am to become the owner of the stock?"

A. That is only one sentence. "I became responsible for said indebtedness only upon the faith of said security aforesaid, and with the further understanding, &c." When I signed this I read that hastily. I still consider it is fairly explained, and I have explained it.

By the COURT:

Q. Then what I understand you to say is, the stock was transferred to secure these debts, and if you paid the debts you could do with the stock as you pleased?

A. Yes, sir.

71 By PLAINTIFF'S COUNSEL:

Q. Now, let me see if I understand you. Do I understand you now to say that when this stock was assigned to you, you then, by agreement between you and Mr. Patterson, became absolute owner of the stock?

A. Yes, sir.

Q. Whether you paid the notes or whether you didn't?

A. Of course, I expected——

Q. Whether you didn't or did pay, you became the absolute owner of the stock?

A. Of course it was intended—

Q. Not what you intended; I am talking about the fact. Were you the owner of the stock; was that the agreement between you?

A. Yes, sir; of course I expected to pay the note.

Q. Have you paid any of these notes?

A. No, sir.

Q. The first note that is in your answer for $2,000, payable to Catherine W. Howell, is for interest semi-annually; that would make that interest fall due on July 9th, 1878?

A. I paid it.

Q. Did you pay it on July 9th, 1878?

A. I can't say whether it was on that date, but it was near that time.

72 Q. Did you pay it prior to the service of this attachment?

A. I can't tell when the attachment was served.

Q. Could you tell when that——

A. It was paid on or about that time.

Q. Don't you know you didn't pay it until after this execution was served?

A. I don't, sir.

Q. Do you say you paid it before?

A. Tell me the date.

Q. The date of the execution is January 17th; the date the note's interest would fall due is July 9th.

A. I really can't answer that question.
Q. Whom did you pay it to; Mrs. Catharine W. Howell?
A. I don't remember, Mr. Watson.
Q. You don't remember?
A. No.
Q. How did you pay it?
A. I think that interest was paid from the dividend I received from the stock that I received.
Q. Have you any books to show to whom and when you paid it?
A. I may have; yes, sir; but I haven't got them here; I paid the interest.
Q. Your office is here in Pittsburgh, isn't it?
A. Yes, sir; on Wood street.
73 Q. Have you your books there?
A. Yes, sir.
Q. Did you pay the interest at 12 months to Alfred Patterson, as guardian; did you pay the semi-annual interest on that July 9th, 1879?
A. Yes, sir.
Q. To whom?
A. To Mr. Patterson.
Q. How did you pay it?
A. By check.
Q. Did you pay it on July 9th?
A. I ain't certain about the date.
Q. Did you pay it before that attachment was served on you?
A. I am not sure.
Q. How about this semi-annual interest on this note for six months, of one thousand dollars, to Harrit Scott?
A. It was paid.
Q. Do you know when—know the date it was paid?
A. No, sir.
Q. One note, on demand, to Mrs. C. W. Howell; do you know whether that was paid prior to this execution?
A. I will ascertain, sir.
Q. At the time, January 9th, 1878, or thereabouts, was there
74 anything else transferred to you by Alfred Patterson—any of his property as security?
A. No, sir.
Q. Wasn't 60 shares of Bank of Commerce stock transferred to you?
A. I don't think it was at that time.
Q. About that date?
A. I can't tell without looking.
Q. On January 12th, 1878, didn't he transfer to you sixty shares of the Bank of Commerce stock?
A. I don't know about the date.
Q. Did he transfer the stock?
A. Yes, sir.
Q. Wasn't the stock transferred to you as additional security to you?
A. Not at all; no, sir.

By Defendant's Counsel:

Q. What is that?

A. It was not.

In the progress of the cross-examination of the said Samuel H. Jacobus, counsel for plaintiff propounded the following interrogatory:

Q. For what purpose was these 60 shares of Bank of Commerce stock transferred to you by A. Patterson, and was it not transferred on the 10th of January, 1878?

Which question was objected by counsel for the defendant, and
75 thereupon the counsel for plaintiff made the following offer, viz:

Counsel for plaintiff, now on cross-examination of the defendant, the witness on the stand, proposes to interrogate him with reference to the dealings between himself and Alfred Patterson, in January, 1878, and with reference to what property of Alfred Patterson's he acquired; and this, as bearing upon the question of the bona fides of the transaction between himself and Mr. Patterson as to this Fayette County Railroad stock which was transferred to the witness, and as also affecting the credibility of the witness as to his testimony already given; whereupon the counsel for the defendant objected that the said testimony was irrelevant and incompetent; and thereupon the court did order and adjudge that the objections were sustained, and at plaintiff's request a bill of exception was sealed for it.

W. McKENNAN, [L. S.]
Cir. Judge.

And the cross-examination proceeded as follows:

Q. Who first spoke to you about this matter; about this transaction here; about taking this stock, and giving these notes?

A. Mr. Patterson.

76 Q. When was it he spoke to you first?

A. On that day, I think, sir.

Q. On the 9th day of January, the same date you gave the notes?

A. I think so.

Q. Did you see any person with reference to the transaction except Alfred Patterson?

A. I saw Henry Patterson.

Q. His son?

A. Yes, sir.

Q. Did you see any person else, except Alfred Patterson and Henry Patterson?

A. No, sir.

Q. Did you consult with any person in reference to this Fayette County Railroad stock?

A. Not that I remember.

Q. Did you consult with Patterson in reference to its value?

A. We spoke of that; yes, sir.

Q. Well, what was said in reference to its value?

A. It was worth about par; that is what I understood.

Q. What was said?

A. I can't remember, Mr. Watson, two years ago, what was said.

Q. You can't remember what was said?

A. Not exactly in words.

77 Q. Can you remember what was said about the value of it?

A. Only that those notes would be about that the stock was worth; it would be about the same thing.

Q. In other words, that the amount of the notes was not more than what the stock would sell for; is that correct?

A. I would not want to put it exactly that way?

Q. Well then, the value of the stock was equal to the value of the notes?

A. About. About equal.

Q. About equal?

A. Yes, sir.

Q. Did you enquire to satisfy yourself it was about equal?

A. No, sir; I took his word for it.

Q. Had you thought before that of making an investment in Fayette County Railroad stock to the amount of $13,000 or $14,000?

A. No, sir.

Q. Never thought of that before?

A. No, sir.

Q. Did you know yourself anything with reference to the value of the stock?

78 A. I had heard of it, and knew that Mr. Patterson was the owner of it, and that it was a dividend-paying stock; that was about all.

Q. The purpose of this transaction was to secure the payment of this indebtedness of Patterson's to the parties, wasn't it?

A. Yes, sir.

Q. On this day, up until the time when this stock was assigned to you and you executed these notes, and gave them to Alfred Patterson, did you see any one of these parties who are named in these notes, either Catherine Howell, Harriet Scott, C. W. Howell, or Mrs. C. W. Howell?

A. No, sir.

Q. You didn't see any of them?

A. No, sir.

Q. You handed these notes to Alfred Patterson?

A. No, sir.

Q. Can you get us the dates when you made these different payments?

A. Yes, sir.

Q. Of the first semi-annual instalment of interest?

A. I think so; I shall try.

And the defendant, to further maintain the issue on his part, called H. W. PATTERSON, who, being duly sworn, testified as follows:

79 Q. You are a son of Alfred Patterson's?

A. I am, sir.

Q. Also his administrator at the present time?

A. Yes, sir.

(Transfer-book shown to the witness.)

Q. Are you the subscribing witness to the transfer of this stock to Mr. Jacobus?

A. Yes, sir.

Q. Were you present when that transfer was made?

A. I was, sir.

Q. Were you present when the notes were given by Samuel H. Jacobus?

A. I was, sir.

Q. To which he has referred in his testimony?

A. Yes, sir.

By PLAINTIFF'S COUNSEL;

You are the administrator of your father?

A. I am.

Q. You are his only child?

A. No, sir.

Q. You are one of his children?

A. Yes, sir.

Q. Your father died intestate?

A. Yes, sir.

(And thereupon the counsel for defendant offered to prove by the witness, the said Henry W. Patterson, that the notes given by
80 Samuel H. Jacobus, were given by him in consideration of the transfer of this stock, and on the faith of the transfer to him: whereupon the counsel for plaintiff objected that the witnes is incompetent to prove this; that Alfred Patterson, the assignor of the thing in action, is dead, and that the witness is a party to the record, and interested in the result of the controversy. Whereupon the court did order and adjudge that the objections were overruled, and at the request of plaintiff's counsel a bill of exception was sealed for it.

W. MCKENNAN, [L. S.]
Cir. Judge.)

And the examination proceeded as follows:

Q. Were you present at this transaction?

A. I was present, and witnessed it.

Q. Will you state what occurred; give the whole transaction in regard to the matter?

A. Probably I had better state what preceded the transfer?

By the COURT:

Anything pertinent to it.

A. Early in January, 1878, my father in conversation——

81 (Plaintiff's counsel object to any conversation.)

By the COURT:

Unless it was in the presence of Mr. Jacobus.

A. It was in relation to Mr. Jacobus, and it was in relation to this transaction. It was pertinent to this transaction.

By PLAINTIFF'S COUNSEL:

Q. Do I understand that Mr. Jacobus was present?

A. No, sir; he was not. I want to say why he was brought in. Father stated that he wanted to secure Mary Howell, to whom he was guardian, and Mrs. Catherine Howell and Mrs. Scott, for whom he was trustee. He said, in thinking the matter over, he didn't know how he could do it.

By DEFENDANT'S COUNSEL:

Q. Was this in presence of Mr. Jacobus?

A. No, sir. Mr. Jacobus came in—I went for him—and father said he wanted to secure these parties, and said that in order to do so he would transfer to him his stock (father's stock) in the Fayette County Railroad Company if he would give the notes to the parties for the amount he owed them. Jacobus asked father if the stock was worth the amount of the notes, and he said he thought it was. Mr. Jacobus reflected a
82 few minutes, and said he would do it. He then drew up the notes and signed them, and I witnessed it, and that was all there was of it.

Q. Were those words, "in trust," written there at the time of that assignment?

A. No, sir; they were not. I am positive of that, because I read over this transfer, and if these words had been there in that different handwriting I would have noticed it.

Q. That is in a different handwriting?

A. Yes, sir.

By the COURT:

Q. Whose handwriting is the body of the transfer?

A. Jacobus's.

Q. Do you know whose the other is?

A. I don't know, sir.

Q. This occurred where?

A. Occurred in father's office, Bank of Commerce, this city.

Q. Who else was present?

A. No one but we three.

Cross-examination by Mr. WATSON:

Q. Do you know whose handwriting those words, "in trust," are?

A. I don't, sir.

83 And thereupon, to further maintain the issue on his part, counsel for defendant stated that the notes referred to in the answer of the said Samuel H. Jacobus were handed to me by Alfred Patterson in his life-time, stating that I was to hold them for the parties named, and they have been held by me ever since. I cannot remember when I received them, but my impression is it was since July 19th, 1878.

And thereupon the witness SAMUEL H. JACOBUS was recalled for further cross-examination by counsel for plaintiff, and examined, as follows:

Q. Prior to July 19th, 1878, when this execution was served on you, what interest, if any, did you pay on these notes?

A. $264, in April.

Q. Was that the $264 you got from the Fayette County Railroad Company?

A. Yes, sir.

Q. As a dividend?

A. Yes, sir.

Q. You paid that to whom?

A. To Mr. Patterson.

Q. You gave the whole amount of it to him?

84 A. I just handed him a check.

Q. With that exception did you pay anything on these notes as interest prior to July 19th, 1878, when this attachment was served?

A. I paid $1,395.

Q. I am asking you July 19th, 1878, prior to that?

A. I didn't pay anything.

By the COURT:

Q. Whom did you pay it to?

A. The next is in January, to Mrs. Howell, $377.

Q. When was that?

A. January, 1879.

By PLAINTIFF'S COUNSEL:

Q. Your next?

A. $754, in July, 1879.

By DEFENDANT'S COUNSEL:

Q. Those last two payments were both in 1879?

A. Yes, sir; in July, 1879, and January, 1879.

By PLAINTIFF'S COUNSEL:

Q. That was after the service of the attachment?

A. Yes, sir.

By DEFENDANT'S COUNSEL:

Q. How much is the whole amount?

A. $1,395.

By Mr. KNOX:

85 Q. That $264 that you handed Mr. Patterson, that was the dividend that you received in March, 1878?

A. Yes, sir; if I received it in March; I don't know when I got it.

Q. Well, here is the dividend-book [book shown to witness].

A. April 6th, 1878.

Q. It was the dividend that was declared in March?

A. Yes, sir; it was.

Q. It was the dividend that accrued between December, 1877, and March, 1878?

A. I don't know how long the last dividend was before that.

And thereupon the counsel for defendant announced to the court that his case was closed and that he rested. Whereupon the plaintiff and defendant having each closed their testimony, the said plaintiff did urge and insist that it was also to have and maintain said action that the said stock was liable on the attachment as aforesaid to be taken and sold as the property of said Alfred Patterson, and did ask the court in writing to instruct the jury as follows:

86 First. If the jury, under all the evidence, should find that the stock in the Fayette County Railroad Company was assigned on January 9th, 1878, to Samuel H. Jacobus in trust for certain creditors of Alfred Patterson, said Patterson being then insolvent, and said assign-

ment being made on account of inability to pay his debts, and to secure the said Jacobus as maker of the notes in evidence given by him on that day to Alfred Patterson, and that the primary purpose and intent of the whole transaction was with the stock to pay certain named creditors, then the said transfer and assignment should, under the Pennsylvania statute, have been recorded in the office for the recording of deeds in the county where said Patterson resided, and if it were not so recorded the said stock is liable to attachment in this case.

JUDGMENT.—Which instruction the court did then and there give in the following words:

If the assignment to Jacobus was an assignment in trust for certain creditors of the assignor merely, it would be within the scope of
87 the State statutes relating to voluntary assignments, and must have been recorded; but if it was the consideration of an assumption by Jacobus of the debts for which he gave his notes, it was not void for the omission to record it, although the primary purpose and intent of the transaction was to secure the payment of the debts assumed by Jacobus.

There certainly can be no doubt of the question under the evidence that the primary purpose and object of Mr. Patterson, and Mr. Jacobus was to secure the debts held by the persons named; but, as I have already stated, he may lawfully do that if he did that in a way that was lawful in itself.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

Second. That if, under all the evidence, the jury should find that the stock was transferred in trust and to secure the payment of the
88 creditors named in the notes then given, and Patterson, the assignor, was thus insolvent, and the assignment was made on account of inability to pay his debts, then it was an assignment which, under the assignment law of Pennsylvania, act of March 24th, 1818, section 5th, and act of April 17th, 1843, section one, should have been recorded in the office for recording deeds where the assignor lived.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This is answered in answer to first point, which I have just read to you. If it was nothing more than a voluntary assignment, an assignment to Mr. Jacobus in trust for certain creditors who are to be protected, then it was voluntary, and it ought to be recorded; but if it was given to him as a consideration for the assumption of Mr. Patterson's liabilities to these persons, then it was not a voluntary assignment, and it was not necessary to record it to give it validity.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

89 Third. That in so far as the stock in this case was assigned to secure the payment of the note dated January 9th, 1878, for $9,345.06, to the order of A. Patterson, guardian of Mary L. Howell, it was in law a hindrance of the creditors of A. Patterson, and therefore void.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This instruction is refused. As I understand it, it is founded upon the assumption that Mr. Patterson was the guardian of Mary L. Howell, and the note given by Jacobus, was not payable within a year after its date; and that the giving of this note, or delivery to Mr. Patterson, postponing the payment for that time, was a hindrance in law of the other creditors of Mr. Patterson. It is difficult for me to see how otherwise the transaction could have been effectuated. Mr. Patterson was the guardian of Mary L. Howell; as to all her affairs here he was the representative of her pecuniary interest, and it is difficult to me to understand how otherwise they would secure anything for her benefit—how they would
90 secure her claim against Mr. Patterson. The note could have been delivered to no other person than her guardian. This instruction is therefore refused.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

Fourth. A transfer of an insolvent debtor's property to hinder or delay other creditors is void; and, under the evidence, the assignment of January 9th, 1878, in so far as it was security for the payment of the note for $9,345.06 to the order of A. Patterson, guardian, was a hindrance to other creditors of A. Patterson, and was void.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This is substantially the same as the point I have just answered, but it is answered thus: A transfer of a debtor's property to hinder, delay, or defeat any of his creditors is void, and in so far as the point presents this proposition it is affirmed; as to the remainder of it, it is refused.

To which judgment and instruction the counsel for plaintiff did
91 then and there except, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

Fifth. If Alfred Patterson, *in* January 9th, 1878, was insolvent, and on that day he assigned the whole of his stock to his son-in-law to secure the payment of the said recited notes, which notes were then handed to Alfred Patterson, and were so held by him until after the execution attachment in this case was served, then this constitutes in law such fraud as to be void against attaching creditors.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This point is also refused.

To which judgment and in struction the counsel for plaintiff did then

and there *accept*, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

Sixth. If the court decline to affirm all of these points, then the
92 jury should by their verdict find the present value of the stock attached; the defendant only has a lien upon the same to secure the payments of said recited notes and interest.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This point rests upon the conclusion you are to find, and it is not possible for the court to give the instructions asked; it is therefore refused. You are to determine under the evidence what the real nature of this transaction was. It is not for the court to instruct you as a matter of law that it was one thing or another.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

Seventh. If the jury should find that at the time the attachment was served, to wit, on July 19th, 1878, Alfred Patterson still had possession of the notes, and that no information had been given the payees therein named of the transaction, then said stock is liable for the plaintiff's
93 claim, and no subsequent ratification by the payees of Patterson's ac't would effect the lien of plaintiff's assignment.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This instruction is refused. It appears here beyond dispute by the evidence that the parties to this transaction in its inception were Mr. Patterson, on one side, on behalf of these creditors whom he wished to secure, and Mr. Jacobus on the other side. At that time Mr. Jacobus irrevocably bound himself by these notes, given in the name of these persons, and took the stock there as security to himself and as the absolute owner of it to protect himself against the liabilities which he had thus assumed. So far as Mr. Jacobus is concerned the transaction was complete, and whether an attachment was served before those notes were actually handed over to the persons for whose benefit they were given, or not, Mr. Jacobus could not dispute if they chose to ratify it. It would not lie in Mr. Jacobus' mouth to say, "Though in so far as I am
94 concerned, I have given you my notes and taken your stock and bound myself to pay you, still the service of the attachment of other of the creditors of Mr. Patterson before you have actually received these notes relieves me from liability. He could not say that. But he was bound from that time, and if these notes were given and the persons at any time afterwards ratified the transaction, Mr. Jacobus' mouth was closed, and he has a right to retain all the securities that were given him, either to protect him in the assumption of these liabilities or as a consideration for his assumption.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

And thereupon the counsel for defendant did ask the court in writing to instruct the jury as follows:

First. If the jury find that the stock in question was assigned to
95 Samuel H. Jacobus in consideration of his assumption of the liabilities of Alfred Patterson to the parties named in the notes given by him at the time, and that such notes were actually given by him on the faith of such assignment, then he is entitled to hold said stock as against this attachment. And this whether he be regarded as holding the stock as pledgee or absolute owner.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This point is answered affirmatively.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

Second. That if the jury find that if said garnishee, Samuel H. Jacobus, gave the notes referred to in his answer filed in this case for the bona fide purpose of securing the parties named therein, without any fraudulent design, that is, without any other intent than to secure them in
96 reference to other creditors of the said Alfred Patterson, relying upon the transfer of said stock to him as his security for so doing, then the verdict should be returned in his favor.

JUDGMENT.—Which instruction the court did then and there give in the following words:

This point is answered affirmatively.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

97 *Execution attachment.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

Whereas the Monongahela National Bank of Brownsville, Pa., lately before the judges of the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, to wit, on the second day of July,

A. D. 1878, by the judgement of the said court recovered against Alfred Patterson the sum of nine thousand and fifty-six $\frac{12}{100}$ (9,056.12) dollars, lawful money of the United States, for its debt, as also the sum of twenty dollars costs and charges by it, about its suit in that behalf expended, whereof the said Alfred Patterson is duly convict, as appears of record. And whereas it is alleged that the said judgment still remains due and unpaid to the said The Monongahela National Bank of Brownsville, Pa., and that there is now standing in the name of Samuel H. Jacobus two hundred and sixty-four shares of the capital stock of the Fayette County Railroad Company, and which it is alleged is the property of said Alfred
98 Patterson, liable to be attached and levied in satisfaction of the judgment aforesaid: Now you are commanded that you attach all and singular the debts due to said Alfred Patterson, as well the said two hundred and sixty-four shares of the capital stock of the Fayette County Railroad Company, and deposits of money made by him, and goods and chattels, pawned, pledged, or demised by him, in whose hands or possession soever the same may be found, and that you make known to the said Alfred Patterson and Samuel H. Jacobus, and all other persons from whom such debts may be due, or in whose hands or possession such moneys, goods, or chattels, &c., may be found, that they be and appear before the said circuit court, to be holden at Pittsburgh, in and for the western district of Pennsylvania, on the first Monday of August next, there to show cause why the judgment aforesaid should not be levied of the effects of said Samuel H. Jacobus in his hands, agreeable to the 35th section of the act of assembly passed the 16th day of June, 1836, relative to executions, and the rules of the said court, and have you then and there this writ.

99 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Pittsburgh, the 17th day of July, anno Domini one thousand eight hundred and seventy-eight, and in the 103rd year of the Independence of the United States.

[SEAL.] H. D. GAMBLE, *Clerk.*

(Endorsed:) Ex. att. No. 25. Nov'r term, 1878. Fi. fa. No. . Term, 187 . Orig. No. 23. Nov'r term, 1878. The Monongahela National Bank of Brownsville vs. Alfred Patterson, Samuel H. Jacobus, garnishee. Debt, $9,056.12. Int. from July 2, 1878. Docket fee, 10.00. Clerk, 10.00. Clerk on mar., 2.50. Mar. on this writ, 14.32. Knox & Reed, attorney for plaintiff.

100 July 17th, 1878. Edward Dean, esq., is hereby authorized and deputed to serve the within writ.

JOHN HALL,
U. S. Marshal.

Attached 264 shares of the capital stock of the Fayette County Railroad Company, standing in the name of Samuel H. Jacobus, as the property of Alfred Patterson, as within I was commanded, and summoned the Fayette County Railroad Company as garnishee by giving to William Beeson, president, and Henry McClay, sec'y and treasurer of said company, being the chief officers thereof, each a true and attested copy of this writ, and

by making known to each of them the contents thereof, at 9 o'c. a. m. of this 18th day of July, 1878.

So answers

EDWARD DEAN,
Sh'ff and Dep'y Marshal.

July 19th, 1878. Served the within execution attachment personally and by copy upon Alfred Patterson, 9.30 o'clock a. m.

JOHN HALL, *U. S. M.*,
101 Per J. F. SWEENEY, *Deputy.*

Served the within execution attachment, personally and by copy upon Samuel H. Jacobus, August 2nd, 1878.

JOHN HALL, *U. S. M.*,
Per R. K. CAMPBELL, *Deputy.*

102 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court for the western district of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between The Monongahela National Bank of Brownsville, Pa., plaintiff, and Samuel H. Jacobus, defendant, a manifest error hath happened, to the great damage of the said plaintiff as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 2 Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2nd day of July, A. D. 1880.

H. D. GAMBLE,
Clerk U. S. Cir. Court.

Allowed by—

W. McKENNAN,
Cir. Judge.

(Indorsed:) No. . term, 18 . vs. .
Writ of error. Filed July 2, 1880.

103 In the circuit court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK OF Brownsville
vs.
ALFRED PATTERSON.
No. 23. Nov. term, 1878.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the

said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 30th day of September, A. D. 1880.

[SEAL.] H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble above named was, at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

W. McKENNAN,
U. S. Circuit Judge.

PITTSBURGH, *Sept. 30th*, 1880.

104 UNITED STATES OF AMERICA,
Western District of Pennsylvania, set:

TO SAMUEL H. JACOBUS, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, wherein the Monongahela National Bank of Brownsville, Pa., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 2d day of July, A. D. 1880.

W. McKENNAN,
Judge of U. S. Circuit Court.

W. McKENNAN.

Oct 4, 1880. Service accepted.

THOS. C. LAZEAR,
Att'y for Sam'l H. Jacobus.

(Indorsed:) No. . term, 18 . No. 943. Monongahela Nat'l Bank of Brownsville vs. Jacobus. Orig'l citation & service. Filed 11th Oct'r, 1880. Filed July 1, 1880.

(Indorsement on cover:) No. 84. The Monongahela National Bank of Brownsville, Pennsylvania, plaintiff in error, vs. Samuel H. Jacobus. W. Pennsylvania, C. C. U. S. Filed 11th October, 1880.

OFFICE SUPREME COURT U.S.
FILED
OCT 15 1883
JAMES H. MCKENNEY, Clerk.

Supreme Court of the United States,

No. 84, October Term, 1883.

THE MONONGAHELA NATIONAL BANK,
OF BROWNSVILLE,

vs.

SAMUEL H. JACOBUS.

In Error to the Circuit Court of the United States, for the Western District of Pennsylvania.

BRIEF OF PLAINTIFF IN ERROR.

D. T. WATSON,
KNOX & REED,
Attorneys for Plaintiff in Error.

PITTSBURGH:
Percy F. Smith, Steam-Power Printer, Cor. Virgin Alley and Smithfield Street.
1883.

—IN THE—

Supreme Court of United States,

No. 84 October Term, 1883.

MONONGAHELA NATIONAL BANK, OF BROWNSVILLE, Plaintiff in Error,

AGAINST

SAMUEL H. JACOBS, Defendant in Error.

STATEMENT OF THE CASE.

On the 2d day of July, 1878, a judgment was entered in favor of the Monongahela National Bank of Brownsville, against Alfred Patterson at No. 25, November Term, 1878, in the Circuit Court of the United States, for the Western District of Pennsylvania, for the sum of Nine Thousand and Fifty-Six and $\frac{12}{100}$ Dollars. On the said judgment so entered, an execution attachment was issued against the Fayette County Railroad Company and Samuel H. Jacobus, on the 17th of July, 1878, attaching two hundred and sixty-four shares of the capital stock of said railroad company, in the hands of said Samuel H. Jacobus, as the property of Alfred Patterson.

In accordance with the practice of said court the plaintiff did file an affidavit with the Clerk of said court, in which the said judgment was obtained, setting forth that there was then standing in the name of Samuel H. Jacobus two hundred and sixty-four shares of the capital stock of

the Fayette County Railroad Company which is verily believed to be really and *bona fide* the property of said Alfred Patterson, the debtor. And it also entered into a recognizance with the two sufficient sureties, conditioned for the payment of such damages as the Court might adjudge to the party to whom such stock should really belong in case such stock should not be the property of the said Alfred Patterson.

On the 19th of July, 1878, the writ of execution attachment was served personally and by copy upon Alfred Patterson, defendant; and on the 2d of August, 1878, it was likewise served upon Samuel H. Jacobus and the Fayette County Railroad Company. On the 24th of August, 1878, a rule and interrogatories to be answered by the Fayette County Railroad Company and Samuel H. Jacobus were entered and were duly served; to which rule and interrogatories answers were duly filed. The interrogatories and answers appear upon pages 4, 5, 6 and 7 of the transcript of the record.

The Fayette County Railroad Company in its answer stated that Alfred Patterson, the defendant, had been the owner of two hundred and sixty four shares of its capital stock prior to the 9th of January, 1878, when he transferred the same to Samuel H. Jacobus. Mr. Jacobus was the son-in law of Alfred Patterson, the defendant in the original suit. The form of the transfer to him will appear in the testimony of Jasper Thompson, Secretary of the company, on pages 22 and 23 of the transcript of the record and was as follows:

"A. PATTERSON TO SAMUEL H. JACOBUS.

For value received, I, A. Patterson, assign and transfer 264 shares of the capital stock of the Fayette County Railroad company to Samuel H. Jacobs in trust, &c.

Witness my hand this 9th day of January, 1878.

A. PATTERSON.

In the presence of

HENRY W. PATTERSON.

In his answer to the first interrogatory addressed to him Mr. Jacobus says, in substance, that Alfred Patterson on the 9th of January, 1878, being in debt to sundry persons, he, Jacobus, became responsible to these persons for the payment of said indebtedness, and gave his several promisory notes therefor, and at the time of assuming said liability, Alfred Patterson as security both to him and to said parties assigned this stock to him *in trust* to indemnify him as maker of said notes "and to secure

said parties entitled thereto to the payment of said notes," he to become the owner of the stock absolutely in case he should pay said indebtedness with his own money.

Upon the interrogatories and answers issue was joined.

On the 12th of May 1880, the death of Alfred Patterson, the defendant, was suggested, and on motion Henry W. Patterson, Administrator of Alfred Patterson, deceased, was substituted of record as a party defendant. The same day case called for trial, and jury sworn and trial proceeded with. May 13th, 1880, verdict was rendered for the defendants.

The evidence discloses that the notes alleged to have been given by Samuel H. Jacobus were never delivered to the parties to whom Alfred Patterson was indebted, but were delivered to said Patterson, who received all dividends upon the stock, from the date of the transfer until the execution attachment in this case was issued.

It was admitted upon the trial, which admission will appear upon the 22d page of the transcript of the record, that upon the 9th of January, 1878, Alfred Patterson was insolvent.

It nowhere appears that the parties for whose benefit this transaction was alleged to have been made at any time had knowledge thereof.

The plaintiff contends that the transaction amounted to an assignment of the stock in question to Samuel H. Jacobus for the benefit of some of the creditors of Patterson, within the terms and meaning of the Act of Assembly of the Commonwealth of Pennsylvania, approved April 7th, 1843, which provides "All assignments of property in trust which shall hereafter be made by debtors to trustees on account of inability at the time of the assignment to pay their debts, to prefer one or more creditors, shall be held and construed to enure to the benefit of all creditors in proportion of their respective demands, and all such assignments shall be subject in all respects to the laws now in force relative to voluntary assignments." Purdon's Digest 10th Ed. 91,

Section 5 of the Act of March 24, 1818 provides that "All assignments so as aforesaid to be made and executed, which shall not be recorded in the office for recording of deeds in the county in which such assignor resides within thirty days after the execution thereof, shall be considered null and void as against any of the creditors of said assignor." Purdon's Digest 10th Ed. 92.

The evidence showed that the assignment was not recorded in Allegheny county, Pennsylvania, where Alferd Patterson, the assignor, then resided.

The stock was therefore liable to the attachment of the plaintiff.

The Errors complained of are based upon the admission by the Court of evidence of matters passing between Alfred Patterson and Samuel H. Jacobus at the time of the transfer and seeking to explain the purpose of the same.

SPECIFICATIONS OF ERROR.

FIRST. The Court erred in overruling plaintiff's objections to the competency of Samuel H. Jacobus, the defendant, as a witness upon his own motion and in his own behalf, as contained in the first bill of exception, and is as follows:

OFFER.

The defendant's counsel offered as a witness Samuel H. Jacobus, the defendant, and thereupon the counsel for plaintiff objected; the said Samuel H. Jacobus, being a party to the record and interested in the suit, was incompetent because Alfred Patterson, the assignor of the stock, the thing in action, was dead. Whereupon the Court did order and adjudge as follows: Objections are overruled and the witness be admitted and a bill is hereupon sealed at the request of the plaintiff.

W. McKENNAN, [L. S.]
Cir. Judge.

SECOND. The Court erred in overruling plaintiff's objections to the following question as contained in the second bill of exception which is as follows:

OFFER.

Question. State what occurred at the time; what induced you to give the note?

Whereupon the counsel for plaintiff, then and there objected, that the said witness, being a party to the record, was incompetent to testify what took place between him and the said Alfred Patterson at the time the stock, the thing in action, was assigned by the said Alfred Patterson to the said Samuel H. Jacobus, he, the said Alfred Patterson, having since deceased. Whereupon the Court did overrule said objection and admitted the testimony, and a bill was sealed at the request of plaintiff's counsel.

W. McKENNAN, [L. S.]
Cir. Judge.

Whereupon the said witness was examined upon and did testify to conversation between himself and the said Alfred Patterson touching the purpose of the transfer of said stock.

THIRD—The Court erred in rejecting the testimony contained in plaintiff's offer in the progress of the cross examination of Samuel H. Jacobus, which offer, objection and ruling constitute plaintiff's third exception and is as follows.

Q.—For what purpose was there 60 shares of the Bank of Commerce stock transferred to you by A. Patterson, and was it not transferred on the 10th of January, 1878?

Which question was objected to by counsel for the defendant, and thereupon the counsel for plaintiff make the following offer, viz.:

OFFER.

Counsel for plaintiff now on cross examination of the defendant, the witness on the stand, proposes to interrogate him with reference to the dealings between himself and Alfred Patterson in January, 1878, and with reference to that property of Alfred Patterson's he acquired; and this, as bearing upon the question of *bona fides* of the transaction between himself and Mr. Patterson as to this Fayette County Railroad stock, which was transferred to the witness, and as also affecting the credibility of the witness as to his testimony already given; whereupon the counsel for the defendant objected that the said testimony was irrelevant and incompetent; and thereupon the court did order and adjudge that the objections were sustained, and at the plaintiff's request a bill of exception was sealed for it.

W. MCKENNAN, [L. S.]
Cir. Judge.

FOURTH—The Court erred in overruling the objection to defendant's offer contained in the fourth bill of exception, which offer, objection and ruling is as follows:

OFFER.

And thereupon the counsel for defendant offered to prove by the witness, the said Henry W. Patterson, that the notes given by Samuel H. Jacobus were given by him in consideration of the transfer of this stock, and on the faith of the transfer to him; whereupon the counsel for plaintiff objected that the witness is incompetent to prove this; that Alfred Patterson, the assignor of the thing in action, is dead, and that the witness is a party to the record, and interested in the result of the controversy. Whereupon the court did order and adjudge that the

objections were overruled, and at the request of plaintiff's counsel a bill of exception was sealed for it.

W. McKENNAN, [L. S.]
Cir. Judge.

Whereupon the witness was examined upon, and did testify to, conversations between himself and Alfred Patterson, the intestate, touching the purpose of the transfer of said stock.

FIFTH—The court erred in refusing to charge the jury as requested by plaintiff in its first point, in writing which point and judgment thereon are as follows:

First—If the jury, under all the evidence, should find that the stock in the Fayette County Railroad Company was assigned on January 9th, 1877, to Samuel H. Jacobus in trust for certain creditors of Alfred Patterson, said Patterson being then insolvent, and said assignment being made on account of inability to pay his debts, and to secure the said Jacobus as maker of the notes in evidence given by him on that day to Alfred Patterson, and that the primary purpose and intent of the whole transaction was with the stock to pay certain named creditors, then the said transfer and assignment should, under the Pennsylvania Statute, have been recorded in the office for the recording of deeds in the county where said Patterson resided; and if it were not so recorded the said stock is liable to attachment in this case.

JUDGMENT:—Which instruction the court did then and there give in the following words:

If the assignment to Jacobus was an assignment in trust for certain creditors of the assignor merely, it would be within the scope of the State Statutes relating to voluntary assignment, and must have been recorded; but if it was the consideration of an assumption by Jacobus of the debts for which he gave his notes, it was not void for the omission to record it, although the primary purpose and intent of the transaction was to secure the payment of the debts assumed by Jacobus.

There certainly can be no doubt of the question under the evidence that the primary purpose and object of Mr. Patterson and Mr. Jacobus was to secure the debts held by the persons named; but, as I have already stated, he may lawfully do that if he did that in a way that was lawful in itself.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

SIXTH—The court erred in refusing to charge the jury as requested by plaintiff in its second point in writing, which second point and judgment thereon are as follows:

Second—That if, under all the evidence, the jury should find that the stock was transferred in trust and to secure the payment of the creditors named in the notes then given, and Patterson, the assignor, was thus insolvent, and the assignment was made on account of inability to pay his debts, then it was an assignment which, under the assignment law of Pennsylvania, act of March 24th, 1818, section 5th, and act April 17th, 1843, section 1, should have been recorded in the office for recording deeds where assignor lived.

JUDGMENT:—Which instruction the Court did then and there give in the following words:

This is answered in answer to first point which I have just read to you. If it was nothing more than a voluntary assignment, an assignment to Mr. Jacobus in trust for certain creditors who are to be protected, then it was voluntary, and it ought to be recorded; if it was given to him as a consideration for the assumption of Mr. Patterson's liabilities to these persons, then it was not a voluntary assignment and it was not necessary to record it to give it validity.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the Court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

SEVENTH—The Court erred in refusing to charge the jury as requested by plaintiff in the third point in writing, which third point and judgment thereon are as follows:

Third—That, in so far as the stock in this case was assigned to secure the payment of the note dated January 9th, 1878, for $9,345.06, to the order of A. Patterson, guardian of Mary L Howell, it was in law a hindrance of the creditors of A. Patterson and therefore void.

JUDGMENT:—Which instruction the Court did then and there give in the following words:

This instruction is refused. As I understand it, it is founded upon the assumption that Mr. Patterson was the guardian of Mary L. Howell and the note given by Jacobus was not payable within a year after its date, and that the giving of this note or delivery to Mr. Patterson, post-

poning the payment for that time, was a hindrance in law of the other creditors of Mr. Patterson. It is difficult for me to see how, otherwise, the transaction could have been effectuated. Mr. Patterson was the guardian of Mary L. Howell; as to all her affairs here he was the representative of her pecuniary interest, and it is difficult for me to understand how, otherwise, they would secure anything for her benefit—how they would secure her claim against Mr. Patterson. The note could have been delivered to no other person than her guardian. This instruction is therefore refused.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the Court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

EIGHTH—The Court erred in refusing to charge the jury as requested by plaintiff in its fourth point in writing, which fourth point and the judgment thereon are as follows:

Fourth—A transfer of an insolvent debtor's property to hinder or delay other creditors is void; and under the evidence the assignment of January 9th, 1878, in so far as it was security for the payment of the note for $9,345.06, to the order of A. Patterson, guardian, was a hindrance to other creditors of A. Patterson and was void.

JUDGMENT:—Which instruction the Court did then and there give in the following words:

This is substantially the same as the point I have just answered, but it is answered thus: A transfer of a debtor's property to hinder, delay or defeat any of his creditors is void, and in so far as the point presents this proposition it is affirmed; as to the remainder of it, it is refused.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the Court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

NINTH—The Court erred in refusing to charge the jury as requested by plaintiff in its fifth point in writing, which fifth point and the judgment thereon is as follows:

Fifth—If Alfred Patterson, in January 9th, 1878, was insolvent, and on that day he assigned the whole of his stock to his son in-law to se-

cure the payment of the said recited notes, which notes were then handed to Alfred Patterson, and were so held by him until after the execution attachment in this case was served, then this constitutes in law such fraud as to be void against attaching creditors.

JUDGMENT:—Which instruction the Court did then and there give in the following words:

This point is also refused.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the Court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

TENTH—The Court erred in refusing to charge the jury as requested by plaintiff in his sixth point in writing, which point and the judgment thereon are as follows:

Sixth—If the Court decline to affirm all of these points, then the jury should by their verdict find the present value of the stock attached; the defendant only has a lien upon the same to secure the payments of said recited notes and interest.

JUDGMENT. Which instruction the Court did then and there give in the following words;

This point rests upon the conclusion you are to find, and it is not possible for the Court to give the instructions asked, it is therefore refused. You are to determine under the evidence what the real nature of this transaction was. It is not for the Court to instruct you as a matter of law that it was one thing or another.

To which judgment and instruction the counsel for plaintiff did then and there except and requested the Court to seal a bill of exception, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

ELEVENTH—The Court erred in refusing to charge the jury as requested by the plaintiff in his seventh point in writing which seventh point and the judgment thereon are as follows:

Seventh—If the jury should find that at the time the attachment was served, to wit, on July 19th, 1878, Alfred Patterson still had possession of the notes, and that no information had been given the payees therein named, of the transaction, then said stock is liable for the plaintiff's

claim, and no subsequent ratification by the payees of Patterson's act would affect the lien of plaintiff's assignment.

JUDGMENT. Which instruction the Court did then and there give in the following words.

This instruction is refused. It appears here, beyond dispute, by the evidence that the parties to this transaction in its inception were Mr. Patterson on one side, on behalf of these creditors whom he wished to secure, and Mr. Jacobus on the other side. At that time Mr. Jacobus irrevocably bound himself by these notes, given in the name of these persons, and took the stock there as security to himself and as the absolute owner of it to protect himself against the liabilities which he had assumed. So far as Mr. Jacobus is concerned the transaction was complete, and whether an attachment was served before those notes were actually handed over to the persons for whose benefit they were given or not, Mr. Jacobus could not dispute if they chose to ratify it. It would not lie in Mr. Jacobus' mouth to say "Though in so far as I am concerned, I have given you my notes and taken your stock and bound myself to pay you, still the service of the attachment of other of the creditors of Mr. Patterson before you have actually received these notes, relieves me from liability." He could not say that. But he was bound from that time and if these notes were given and the persons at any time afterwards ratified the transaction, Mr. Jacobus' mouth was closed, and he has a right to retain all the securities that were given him, either to protect him in the assumption of these liabilities or as a consideration for his assumption.

To which judgment and instruction the counsel for plaintiff did then and there except, and requested the Court to seal a bill of exception which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

TWELFTH—The Court erred in charging the jury as requsted in defendants first point in writing which first point and judgment thereon are as follows:

First—If the jury find that the stock in question was assigned to Samuel H. Jacobus in consideration of his assuption of the liabilities of Alfred Patterson to the parties named in the notes given by him at the time, and that such notes were actually given by him on the faith of such assignment, then he is entitled to hold such stock as against this attachment, and this whether he be regarded as holding the stock as pledgee or absolute owner.

JUDGMENT:—Which instructions the Court did then and there give in the following words: this point is answered affirmatively.

To which judgment and instruction the counsel for plaintiff did then and there except and request the Court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

THIRTEENTH The Court erred in charging the jury as requested in defendant's second point in writing which second point and judgment thereon are as follows:

Second. That if the jury find that if said garnishee, Samuel H. Jacobus gave the notes referred to in his answer filed in this case for the *bona fide* purpose of securing the parties named therein, without any fradulent design, that is without any other intent than to secure them in reference to other creditors of the said Alfred Patterson, relying upon the transfer of said stock to him as his security for so doing, then the verdict should be returned in his favor.

JUDGMENT:—Which instructions the Court did then and there give in the following words: This point is answered affirmatively.

To which judgment and instructions the counsel for plaintiff did there and then except and requested the Court to seal a bill of exceptions, which was accordingly done.

W. McKENNAN, [L. S.]
Cir. Judge.

ARGUMENT.

The theory of plaintiff's case is that the transfer of the stock of the Fayette County Railroad Company on January 9th, 1878, by A. Patterson to Samuel H. Jacobus, his son-in-law, was in fact an assignment for the benefit of creditors within the terms and meaning of the Act of Assembly of the State of Pennsylvania, of April 17th, 1843, and not having been recorded as required by the Act of 24th of March, 1818, said stock was liable to attachment in the hands of Jacobus, the trustee, as Mr. Patterson's property.

The Act of the 17th of April, 1843, provides that "All assignments of property in trust which shall hereafter be made by debtors to trustees on account of inability, at the time of the assignment, to pay their debts, to prefer one or more creditors, shall be held and construed to ensure to the benefit of all the creditors in proportion to their respective

demands, and all such assignments shall be subject in all respects to the laws now in force relative to voluntary assignments." Section 24 of the Act in reference thereto provides that all assignments must be recorded within thirty days after their execution, else they shall be void against the creditors of the assignor. Under these provisions of statutory law plaintiff should have recovered, if the transaction referred to was a voluntary assignment for the benefit of some of Patterson's creditors. A voluntary assignment for the benefit of creditors has been defined to be "A transfer without compulsion of law by a debtor of some or all of his property to an assignee, or assignees in trust to apply the same, or the proceeds thereof to the payment of some or all of his debts and return the surplus, if any, to the debtor." *Vide* Burrell on Assignments, page 3. This definition is based upon one of similar import and almost identical language by Mr. Justice Lowrie in Wiener vs. Davis 6 Harris 333.

A trustee is essential to constitute a voluntary assignment for the benefit of creditors, and it is this feature that distinguishes it from an assignment directly to creditors.

The cases are numerous recognizing that where there are the three essentials, an insolvent debtor, a trustee and creditors, a transfer *by* the first *to* the second *for* the third constitutes an assignment for the benefit of all creditors. This branch of the argument cannot be better put nor a more suitable preface made to an enumeration of the cases than by quoting the language of Judge Hare, of Philadelphia, in Lucas vs. Sunbury and Erie Railroad Company, 8 Casey, 458, in which he expresses himself on this question in terms expressly approved by the Supreme Court in re examining the case on a writ of error.

"Were I to express the inclination of my own mind," said the learned judge, "on the point now before us, I should say that every grant or transfer by a debtor which places the property transferred beyond the reach of an execution and charges it with a trust for the payment of debts, is within the letter and spirit of the acts of the Assembly, by which assignments for the benefit of creditors are regulated, and is consequently void, unless the provision of these acts are complied with, both as it regards the nature of the trust and the formalities necessary for its creation. The means employed in each particular instance would have seemed to me immaterial if the result were a transfer in trust or a trust bottomed on a transfer, if, in short, the property ceased to be the debtor's without vesting directly and absolutely in his creditors and remained outstanding in the hands of a

third person who could not be compelled to render an account or to fulfill the duties imposed upon him without recourse to the aid of equity. In other words, that the law says to the debtor. You may put your property in any form in which it can be seized and applied to payment of your debts or you may give it to your creditors, because it will then go to pay your debts directly, but you shall not place it in a situation where it shall be neither yours nor theirs—where no execution can reach it without submitting to these rules and restrictions which have been prescribed for the regulation of trusts of this description and which would seem essential to prevent them from becoming a fraud upon creditors instead of a benefit."

The Supreme Court after commending this language as a clear exposition of the principles involved, go on to say under the facts of that case they have property, a trustee, a trust and creditors of an insolvent, who take under it "and the simple question is whether by an ambiguous inversion of language the real meaning of this instrument can be so covered as to defeat the operation of a most salutary law" held it would not.

In *York County Bank* vs. *Carter*, 2 Wright, 446, "where partners being heavily indebted transferred by deeds and bills of sale their entire property to another party in consideration of the satisfaction of his claim against them and his assumption to pay the balance of the purchase money in discharge of the debts due certain other specified creditors the transaction and sale, if *bona fide*, for a fair price and with the honest intent to pay their preferred creditors is not void because certain creditors are preferred." This transaction was attacked as within the prohibition of the statute of 13 Eliz ch. 5. But the court, Strong, J., delivering the opinion, said the transaction would have amounted to an assignment if it had been shown that a trust was created for the creditors and that such trust doubtless might have been proven by parol evidence.

In *Beans* vs. *Bullitt*, 7, P. F. Smith, 229, Strong J. again speaking for the Court says, "To constitute an assignment in trust for the benefit of creditors within the meaning of the Act of March 24th, 1818, there must be a transfer of the property assigned to another; the form is not material but there must be the substance, there must be a trust also created for the creditors of the assignor and a trust which is enforceable in equity; in regard to these principles there is no controversy."

(*Vide* Estate of Charles Miller, 6 Philadelphia Reports, 322.)

This case decides that the transaction may be an assignment even though not intended.

We have gone thus fully into the theory of our case in the court below, to show how greatly the verdict must have been affected by the admission of the testimony of Jacobus, the garnishee, and Patterson, the administrator of the original defendant in the action, both of whom were examined upon matters passing between themselves and Alfred Patterson, the original defendant in the action, then deceased, touching the purpose of the transfer of the stock attached.

In this case it was clearly shown that Patterson, the assignor of the stock at the time of the assignment was insolvent; that Jacobus, the assignee of the stock, took it upon a trust for the benefit of the parties named in his notes to whom Patterson was indebted, which phase of the case would have been uncontradicted, and presumably, therefore, would have controlled the verdict of the jury had not the evidence of Jacobus, the assignee, and Henry W. Patterson, the administrator of Alfred Patterson, deceased, both of whom were parties to the record been admitted.

Were these witnesses competent?

Section 858 of the Revised Statutes provides "In the Courts of the United States no witnesses shall be excluded in any action on account of color or in any civil action because he is a party to or interested in the issue tried. *Provided*, That in actions by or against executors, administrators or guardians in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate or ward unless called to testify thereto by the opposite party or required to testify thereto by the Court.

Both Patterson and Jacobus were witnesses upon their own motion and in their own behalf, and both were parties to the record. It will be seen by reference to page 9 of the transcript of the record that upon May 12th, 1880, the death of Alfred Patterson, the defendant, was suggested in this case and an order was made substituting Henry W. Patterson, his administrator, as defendant herein. This was upon the day of the trial and the jury were sworn, as will appear on page 13 of the record, to try the issue between The Monongahela National Bank of Brownsvillle and Samuel H. Jacobus and The Fayette County R. R. Co., Garnishees of Henry W. Patterson, Administrator. We submit that the case of Page vs. Bernstein, reported in 102 U S., 664, governs this case. In that case Mr. Justice Harlan reviewed the legislation up-

on the subject and pronounced, as we think, in favor of the proposition contended for by the plaintiff in error.

An analysis of sec. 858, R. S., was made by Mr. Justice Harlan in Potter vs. National Bank, 102 U. S. 163.

He says: "The first clause of that section shows that there was in the mind of Congress two classes of witnesses—those who were parties to the issue, that is parties to the record, and those interested in the issue to be tried, that is those who, although not parties to the record, held such relations to the issue that they would lose or gain by the direct legal operation and effect of the judgment. * * * But, whether a party to or only interested in the issue, the witness is not to be excluded in the Courts of the United States upon either ground, except that in actions in which judgment may be rendered for or against an executive administrator or guardian, no party to the action can testify against the other as to any transactions, with a statement by the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the Court." Thus it would seem that both Jacobus and Patterson were incompetent witnesses, being parties to the action, if it were an action, in which judgment might have been rendered against an administrator, &c.

"The proviso," it is added in the above case, "excludes those who are technically parties."

This attachment was under the act of June 16th, 1836. Purdon's Digest 10th Ed. 639.

A judgment against the garnishee would have been judgment against the administrator of the original defendant.

Section 38 of the act says:

"If judgment shall be given for the plaintiff in such attachment, it shall be lawful for him to have execution thereof as follows, to wit.: If the property attached be stock in a corporation as aforesaid, the execution shall be by a writ of *fieri facias* against the original defendant, by virtue of which such stock, or so much thereof as shall be necessary to satisfy the judgment and costs, may be sold by the sheriff as in other cases."

A judgment may with accuracy be said to be against any and all persons who are bound thereby; a judgment against a garnishee must certainly be a judgment against the original defendant, else what would protect a garnishee in paying such judgment; "a judgment against the garnishee binds the assignee in bankruptcy of the defendant."

Yerkes vs. Cole, 7 Phil'a 189.

In this case it is said:

"It should be remembered that the defendant in an attachment execution receives actual notice and has a day in Court. It is a final process to obtain satisfaction of an obligation which has been judicially established."

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SUPREME COURT U.S.
FILED
OCT 25 1883

Supreme Court of the United States.

No. 84, OCTOBER TERM, 1883.

THE MONONGAHELA NATIONAL BANK
OF BROWNSVILLE,

vs.

SAMUEL H. JACOBUS, et al.

Error to the Circuit Court of the United States, for the Western District of Pennsylvania.

BRIEF OF DEFENDANTS IN ERROR.

THOS. C. LAZEAR.
Attorney for Defendants in Error.

JOHNSTON, PRINT.

IN THE

Supreme Court of the United States.

No. 84, OCTOBER TERM, 1883.

THE MONONGAHELA NATIONAL BANK
OF BROWNSVILLE,

vs.

SAM'L H. JACOBUS AND THE FAYETTE COUNTY
RAILROAD COMPANY.

COUNTER STATEMENT.

This case in the Court below stood as follows: (See p. 13 of printed record.)

THE MONONGAHELA NATIONAL BANK OF BROWNSVILLE, *vs.* SAM'L H. JACOBUS and THE FAYETTE COUNTY RAILROAD CO., Garnishee of HENRY W. PATTERSON, Administrator.	Ex. No. 25, Nov. Term, 1878. Original 23, Nov. Term, 1878.

The proceeding was, as the record shows, an attachment execution, and was really a process in execution of the judgment recovered by the Bank against Alfred Patterson, in his lifetime, at No. 23, Nov. Term, 1878, and as further appears by the record, the issue tried was upon pleas filed by the garnishees, Samuel H. Jacobus and the Fayette County Railroad Company. There was no issue and no trial whatever as to Henry W. Patterson, the administrator of Alfred Patterson, then deceased, (who died some time in the latter part of 1878,) the controversy being confined exclusively to the Bank on one side and the garnishees on the other.

It was a mistake in the statement of this case by the plaintiff in error to say that Alfred Patterson received all the dividends on the stock in question from the date of its transfer to Samuel H. Jacobus until the execution attachment in this case was issued. The testimony of Wm. Beeson, the president of the Company, who was examined as a witness for plaintiff, was, that Mr. Jacobus had received the only dividends paid during that time, and no one testified differently. This was also the statement of the Company in their answer to the interrogatories filed by plaintiff in the case. (See p. 5 of record.) It was also shown by the testimony of Mr. Jacobus, that up to the time of the trial he had paid to the parties entitled thereto, at different times, the sum of $1,395 in all, on account of the notes which he had given as the consideration for the transfer to himself of this stock; and as to the delivery of these notes to Alfred Patterson, the evidence was that the latter in his lifetime handed them over to another person to hold for the parties named, in whose possession they were at the time of trial.

The allegation that it no where appears that these parties ever had knowledge of the transaction in regard to the giving of these notes, is perhaps sufficiently disproved by the fact testified to by Mr. Jacobus, that he had made payments at various times, to these parties, on account of the notes.

ARGUMENT FOR DEFENDANTS IN ERROR.

The two questions arising upon the record in this case and argued on behalf of plaintiff in error, are *First*, whether the transfer of the stock in question was, in fact, an assignment for the benefit of creditors within the meaning of the Act of Assembly of Pennsylvania, of April 17th, 1843; and *Second*, whether Samuel H. Jacobus and Henry W. Patterson were competent witnesses for the garnishees.

(1.) As to the first of these questions, this, of necessity, became a question of fact for the jury, for the assignment of the stock on the books of the Company while stating that it was "*in trust, &c.*," did not state the nature of the trust nor for whose benefit it was made. And moreover, the testimony of H. W. Patterson, as well as Mr. Jacobus, was to the effect that the words "*in trust, &c.*," were not contained in the written transfer when it was made, but were *afterwards inserted* by some person unknown, without the knowledge of Mr. Jacobus, and that the subject of a trust was not even

mentioned at the time of the transfer. And the answer of Mr. Jacobus to the interrogatories filed, in connection with his testimony explaining the transaction, (see p. 27 of the record,) negatives the idea that the word *trust* contained in the answer was intended to be used in a technical sense, or as importing anything more than the confidence Mr. Patterson reposed in him that he would pay the notes to the parties in whose favor they were given. Such being the evidence on this question of a trust, it resolved itself into a question of fact upon which a jury only could pass, and it was fairly submitted to the jury in this case, with distinct instructions from the Court, "that if the assignment to Jacobus was an assignment "in trust for certain creditors of the assignor merely, it would be "within the scope of the State statutes relating to voluntary assign-"ments and must have been recorded." (See answers of Court to plaintiffs' first and second points, pp. 1 and 7 of plaintiffs' brief.

The verdict having been rendered for the defendants on this question, we submit that it was thus established beyond further controversy that the assignment in question was not an assignment in trust for creditors, and therefore, that this verdict should be conclusive of this branch of the case.

Assume, however, that there was evidence in the case upon which the Court should have determined, *as matter of law*, whether or not the transaction amounted to an assignment in trust for creditors, the only evidence tending, in the remotest degree, to show this, was in the use of the words "*in trust, &c.*," contained in the written transfer on the books of the Company, and in what Mr. Jacobus stated in his answer to the interrogatories filed in the case, for all the other testimony was inconsistent with the notion of a trust for creditors.

Now, the words "*in trust, &c.*," contained in the written transfer, do not, of themselves, import a trust *for creditors*. In fact, without evidence *aliunde*, they mean nothing, and therefore the Court could not pass upon them as matter of law.

Is there, then, anything in the answer of Mr. Jacobus implying a trust for creditors within the meaning of the Pennsylvania statute? The answer touching this matter states that at the time of the giving of the notes referred to in the answer, Alfred Patterson assigned to him as security, both to himself (Jacobus) and to the parties named in the notes, 264 shares of the capital stock of the Fayette County Railroad Company, "in trust to indemnify him "(Jacobus) as maker of said note, and to secure said parties en-

"titled thereto the payment of said indebtedness." And he further adds in the same connection, that "he became responsible for said "indebtedness only on the faith of the security aforesaid."

Now we submit that the Court, under the state of facts disclosed by this answer, could not pronounce the transaction an assignment in trust for creditors, but we maintain that it constituted Jacobus a purchaser of the stock for value. In support of this position we refer to the following decisions of the Supreme Court of Pennsylvania:

"A contract in which the grantee enters into a stipulation for the "security of debts, is not a mere assignment for the benefit of credit-"ors. The grantee is a purchaser for value." Fallon's Appeal, 6 Wright, 235.

An assignment to secure subsequent advances to be made by the assignee for payment of the debts of the assignor is simply a pledge or mortgage, and does not constitute the assignee a trustee for creditors. Bears *vs.* Bullitt, 7 P. F. Smith, 229.

A mortgage to a trustee, with power to sell for the payment of the debt thereby secured, is not deemed an assignment for the benefit of creditors, which must be recorded within thirty days. Man. & Mech. Bank *vs.* Bank of Pennsylvania, 7 W. & S., 335.

Where partners being heavily indebted transferred by deeds and bills of sale their entire property to another party in consideration of the satisfaction of his claim against them, and his assumption to pay the balance of the purchase money in discharge of the debts due certain other specified creditors, the transaction and sale, if *bona fide*, for a fair price and with the honest intent to pay their preferred creditors, is not void because certain creditors are preferred, if there was no intent to hinder, delay or defraud others. The York County Bank *vs.* Carter, 2 Wright, 446.

In that case STRONG, J., said: "It is not to be doubted that a "debtor may lawfully sell his property in consideration that the "purchase money be paid to some of his creditors to the exclusion or "postponement of others, if it be done without any fraudulent de-"sign, that is, without any other intention than to prefer one to "another."

And in Bears *vs.* Bullitt, *supra*, it was said by STRONG, J., that to constitute an assignment in trust for creditors within the meaning of the Act, there must be a trust created for the benefit of the creditors of the assignor, and *a trust which is enforceable in equity.*

Could it be pretended in this case that the holders of the notes given by Mr. Jacobus could enforce any trust against him with respect to the stock in controversy? What remedy could they have except against Mr. Jacobus personally, for payment of the notes?

(2.) Were Samuel H. Jacobus and H. W. Patterson competent witnesses for the garnishees in this case? This, we submit, depends upon the construction to be given to section 858 of the Revised Statutes of the United States, for as that statute provides for such cases, the statutes of Pennsylvania on the same subject are inapplicable. Potter *vs.* National Bank, 102 U. S., 163. Now it will not be denied, but it seems to be conceded, that, if these witnesses were incompetent at all, it was because of that part of the statute referred to which provides, "that in actions by or against executors, administrators or guardians, in which *judgment may be rendered for or against them*, neither party shall be allowed to testify against the other, as to any transaction with or statement by the testator, intestate or ward, unless called to testify thereto by the opposite party or required to testify thereto by the Court." But we submit that even if Henry W. Patterson, the administrator of Alfred Patterson, dec'd, could properly be regarded as a party to this proceeding, it was *not possible that a judgment could be rendered against him in the case*, for there was no issue as to him, no plea on which issue could be joined, and the jury was not sworn as to him. The issue and trial were between no other parties than the plaintiff and the garnishees. In fact, the substitution of H. W. Patterson, as administrator, was wholly unnecessary, inasmuch as he had no defense to interpose.

When a defendant dies pending an attachment execution, it is not necessary to bring in his personal representatives before entering judgment against the garnishee, though the Court *may* let them in to take defense in a proper case.

1 Troubat & Haley's Practice, Sec. 1208.

Etting *vs.* Moses, 1 Philad. Rep., 399.

It is true that Alfred Patterson was in this case, in his lifetime, served with the writ of attachment, in accordance with the direction of the Act of Assembly, but this provision of the statute is intended for no other purpose than to give the defendant "a day in Court," so as to afford him an opportunity to prove payment or release of the original judgment. If he should have any such defense, and should plead it, the case is then tried against him alone

on that issue, before there can be a trial of the attachment against the garnishee. 1 Troub. & Haley's Prac., Sec. 1202.

The syllabus in McCorman *vs.* Hancock, 2 Barr, 310, states briefly the practice in such cases, as follows :

"An attachment in execution and *scire facias* having been served on the original defendant and the garnishee, the jury should be sworn as to the garnishee alone, on the trial of the issue on the plea of *nulla bona*, for though both parties are required to be served, the proceedings are distinct."

And in that case, ROGERS, J., in delivering the opinion of the Court, said : "Although the 36th section of the Act of the 16th of June, 1836, directs that it shall be the duty of the officer charged with the execution of the writ of attachment to serve a copy of the writ upon the defendant in the judgment, it does not follow, as is contended, that the jury shall be sworn as to him in the suit against the garnishees. This would serve no good purpose ; for here the debt has been already ascertained, and the judgment rendered on which the execution is issued. To refer the cause to the same jury would answer no other purpose than to embarrass the proceedings. If the defendant has any defense he may appear, plead payment, and have the cause tried. But this is not a pre-requisite to the trial between the plaintiff and garnishee."

And to the same effect is Ogilsby *vs.* Lee, 7 W. & S., 445.

According to the ruling in the above cases it follows that the only judgment possible in the present case was a judgment against the garnishees alone. And as there was no issue as to the administrator of Alfred Patterson, deceased, there never could be a judgment against him.

But again, in the absence of any defense by the administrator, could he even be called a party to the attachment? The language of the Court in Ogilsby *vs.* Lee, above cited, would seem to justify the inference that he could not be, for SERGEANT, J., who delivered the opinion of the Court in that case, in referring to the service of the attachment on the defendant, said, "To this summons it is clear the defendant may appear and become a party and plead payment, or any other plea which he might have taken advantage of upon a *scire facias*." From this the inference would be that to constitute the defendant in the original judgment a party to the attachment, it is requisite that he should both appear and plead.

The thirty-eighth section of the Act of Assembly referred to in the brief of plaintiff in error, providing for a sale of stock attached

in a corporation, in the event of a judgment being given for the plaintiff in the attachment, and directing that the sale be made by writ of *Fi. Fa.* against the original defendant, does not warrant the inference which the plaintiff in error wishes to be drawn from it; that a judgment against the garnishee in such attachments is tantamount to a judgment against the original defendant, for such an execution would properly issue on the original judgment, it having been ascertained by the judgment against the garnishees in the attachment that the stock attached was the property of the defendant and liable to seizure and sale for his debts.

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